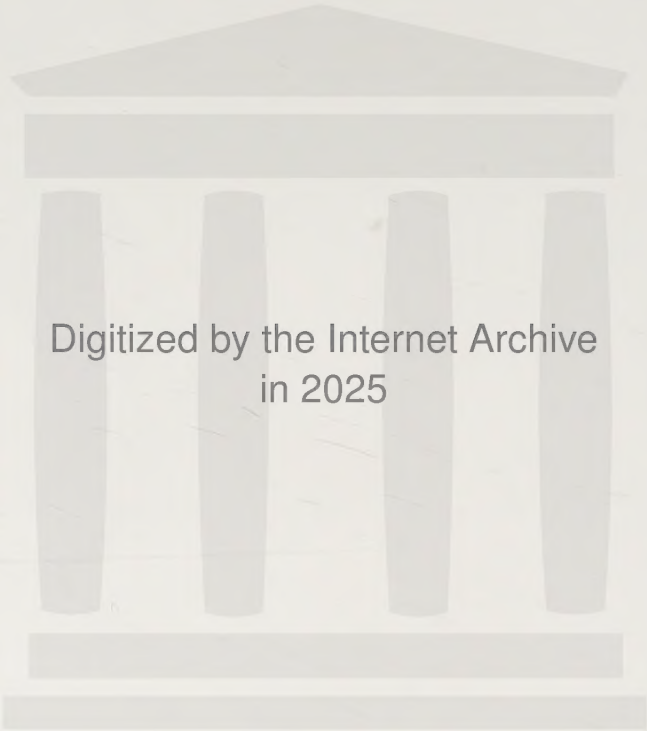
THE

REPUBLIC OF REPUBLICS;

OR,

AMERICAN FEDERAL LIBERTY.

By P. C. CENTZ, Barrister.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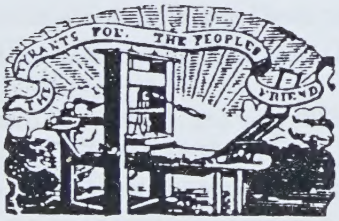

INVICTUS
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PREFACE TO THE INVICTUS EDITION

The Author's pen-name (P. C. Centz) stood for "public common sense;" but his real name was Bernard Janin Sage. He was born in 1821 in Connecticut, where he became a lawyer. He then moved to New Orleans to practice law and become a sugar planter; and became a very wealthy man. Through years of study he became VERY well versed in the Southern apologia, or defense of the Constitution; and was one of several men whom the Confederacy sent to England in 1864 to try and enlighten the people of Europe concerning the true nature of the "Cause" for which the Confederate States were at War. Then (as now) this was no easy task, since Lincoln's so-called "Emancipation Proclamation" had made it appear that HE was fighting to free the slaves; while the Confederacy was formed to PERPETUATE slavery.

Sage (like another of those men sent to England, Dr. Albert Taylor Bledsoe) decided to present his case in a book. The first edition was published early in 1865, while the shooting phase of this on-going dispute over the Constitution and the nature of our ORIGINAL form of government, was still active. Its title was THE REPUBLIC OF REPUBLICS; OR, AMERICAN FEDERAL LIBERTY. Three English editions came out before this much enlarged and improved final edition appeared in Boston in 1881 . . . the year in which Jefferson Davis published his own two volume set: THE RISE AND FALL OF THE CONFEDERATE GOVERNMENT.

Richard M. Weaver, in a very interesting book of his own (THE SOUTHERN TRADITION AT BAY, 1968; and now: Regnery Gateway, 1989) has several interesting comments about Sage's book (p. 117-118): "This ingenious analysis is supported by the most Painstaking reading of law and history to show the difference between what the founding fathers had laid down and what the Lincoln administration had assumed. Sage was . . . positive . . . that the states had never sacrificed their sovereignty, and that Federal

coercion of them was usurpation." Sage, speaking about the Lincoln administration and its war on the Constitution said, "An invidious and fraudulent revolution is now going on, which by subjugating the people to a self-determining government placed the United States on the road travelled by all moribund republics." On the title page of this 1881 edition of his book Sage reveals the nature of its contents thusly, it is ". . . a retrospect of our century of federal liberty. An attempt to ascertain from the federal constitution, from the acts of the pre-existent states, and from the contemporaneous exposition of the fathers, the sovereignty, citizenship, allegiance, and treason of the U.S.: the obligation of the president's constitutional oath; and the reasons why the trial of the Confederate chiefs was evaded . By one of the counsel in the case of Jefferson Davis."

In a footnote in volume one, on page 97 of his set Mr. Davis has this to say about Sage's book, "This reference is taken from THE REPUBLIC OF REPUBLICS, part III, chapter VII, page 217. This learned, exhaustive, and admirable work, which contains a wealth of historical and political learning, will be freely used, by kind consent of the author, without the obligation of a repetition of special acknowledgment in every case. A like liberty will be taken with the late Dr. Bledsoe's masterly treatise on the right of secession, published in 1866, under the title IS DAVIS A TRAITOR? OR, WAS SECESSION A CONSTITUTIONAL RIGHT?"

Sage also wrote other books and articles concerning the justness of the Confederate cause; for example: DAVIS AND LEE, published in England in 1865; and New York in 1866. This was a vindication of the Confederate Cause; and a protect against the radical Yankees who were trying to have these men, and others, executed for treason. SOME GREAT CONSTITUTIONAL QUESTIONS, 1884, being 15 pages printed in volume 12, page 485, of the Southern historical Society Papers. THE FEDERALIST, EXPLAINED BY ITS AUTHORS, 1887, being 20 pages in volume 2 of a 27 volume set entitled: LOUISIANA ADDRESSES.

In 1890 Sage joined with 13 other Southern men, such as Zebulon Vance, Robert Stiles, and others of that type who had lived

THROUGH the War AND the so-called Reconstruction, in writing a symposium entitled: WHY THE SOLID SOUTH? OR, RECONSTRUCTION AND ITS RESULTS. This book was intended to show to business men of the Northern states what had happened to the Southern states when they were turned over to the Freedmen, and bureaucrats, and Carpet Baggers. It was hoped that such information might convince the Northern men to whom it was addressed to stand by the Southern ex-Confederates as they tried to maintain the control over the affairs of their states regaining, rather than turning them back over to the same elements which had all but ruined them during Reconstruction. The Authors hoped this would induce more investments in the poverty-stricken and war-ruined Southern states by their richer Northern neighbors; while leaving their political affairs in the hands of the good men who had been in political control prior to the war. In other words the book was a, ". . . straight-forward account of what carpetbaggery and Negro rule had meant in terms of responsible government, so needful to business." It was, ". . . factual histories of Reconstruction in each of the ex-Confederate states. . .," as well as West Virginia and Missouri.

Of course many modern so-called historians renounce the historic facts of Reconstruction; and in effect claim it was NOT a BAD time in the Southern states, but was actually a very POSITIVE time of progress, and thus was very AMERICAN! In my own opinion the war (and "Reconstruction") have not resulted in the "Americanization" of the Southern states as much as they have in the "Africanization" of the entire "United States!" But . . . that's just my opinion . . . . .

According to the politically CORRECT view of OUR history, slavery was ALL bad; Lincoln was wise, honest, kind, and a STRONG advocate of preserving Constitutional Liberty; and Reconstruction was an out-right blessing all around! I think we should trust writers who were actually THERE—don't you? whether or not the American states (Northern, Southern, Eastern, OR Western), which are STILL (INDIVIDUALLY) SOVEREIGN (de jure), SHOULD ever regain the exercise OF their free and independent rights and authority, is NOT the topic of this brief

introduction. Perhaps you can make a better judgement of THAT interesting prospect AFTER you have read this book; and some of the other titles I have listed here. I AM aware that in suggesting that you read such OLDER titles that I am in opposition to certain modern "authorities" who sneer at the older authors; and say they are too "dry" and detailed to be of any interest today. but with the Confederacy on trial for the vindication of its very life, NO point can be too small, or dry, or otherwise seemingly un-important as to be ignored, laughed at, or rejected because of the assumed sophistication of the so-called "modern scholarship." We spend our time on what we think is REALLY important, whether it be the myths of a Ken Burns video; or the "painstaking" and "exhaustive" writings of some one like Sage. There ARE no short cuts to true knowledge! The REAL student (or: scholar) KNOWS this, and will MAKE the necessary effort to obtain it.

Bernard Janin Sage died in 1902 . . . Unreconstructed until the end of this life! A REAL American Patriot; no less-so than George Washington or Jefferson Davis! The SAD thing is that Sage, and others like him, are largely forgotten by the Southern people of TODAY! Possibly at no other time since the war has there been such an up-surge of interest in the war itself; and in the "Lost Cause" of the Confederacy, the rejection of which had brought on the war. Books by modern "pro-Southern" authors seem to tumble over one another coming from the presses. And (thankfully) a FEW of them are WELL worth reading. (SOME of the them SEEM to just be products of someone wanting to jump on the band wagon and reap some of the glory, and honor; and maybe even some of the more mundane benefits publishing a quick-selling book can bring.) There are ALSO a few of the OLD standards coming back into print. My own opinion in this matter is that you will spend your time better (in the long run) if you'll read some of the older authors who were THERE; and in a position to KNOW what they were trying to do. Most modern authors start with the notion that the Union PRIOR to Lincoln's revolution was a Nation, sub-divided into political segments called states; like it is today, except that the states had more control over them selves than they do today. You don't have to read very far after such writers as Sage; or Davis; and

Stephens, et al, to realize that his was/is NOT the type Union the Confederates knew and wished to preserve. Although some may think it is only splitting hairs of no consequence, I firmly believe that even though some of the differences are subtle between the older authors and certain of the present day authors, they are never-the-less vastly at variance with one another; and I greatly fear that if we follow those who are leading in a slightly different direction we will NOT arrive where we'd like to be— and could POSSIBLY end up in a worse condition than we are in already. The Founding Fathers of the Confederacy claimed they had formed their new federal union in order to try and preserve the ORIGINAL form of government which the American Founding Fathers of the Revolutionary War era had established. You owe it to your self to read such books as this one by Sage to see if what they said was TRUE . . . or NOT. In the interest of helping you to make such a study I have listed a few other titles which might help you . . . God willing. THE CONSTITUTION OF THE UNITED STATES. II Volumes, 1899, by Hon. John Randolph Tucker. This is a rare but EXCELLENT discussion of our original American form of government, which Lincoln's hords destroyed, for all practical purposes, in the 1860's. ("Destroyed" de facto . . . NOT de jure! Tucker points out that de facto means: as a matter of fact; while de jure means: what is legally true or right.) He wrote these books while teaching the subject at Washington and Lee. BLACKSTONE'S COMMENTARIES: WITH NOTES OF REFERENCE TO THE CONSTITUTION AND LAWS OF THE FEDERAL GOVERNMENT OF THE UNITED STATES; AND THE COMMONWEALTH OF VIRGINIA. Five volumes, 1803; by Hon. St. George Tucker, the grandfather of J.R. Tucker above. This set was frequently quoted by Southern authors prior to the War. Judge Tucker added his comments to Blackstone's set to use as the first "American" law text books when he took George Wythe's place as Professor of Law at the College of William and Mary. This set is usually considered the first real American commentaries on the Federal Constitution. Tucker believed the states were individually sovereign; and had voluntarily joined the Union, while retaining their sovereignty (like the States in the

United Nations); and therefore could LEAVE the Union IF they felt it necessary. He deplored such a necessity; but didn't deny it. He also wrote a short work to try and encourage the gradual abolition of slavery; and several poems and plays. BOTH of these great American patriots are nearly forgotten today—even in the South. St. George was a officer under George Washington during the Revolution; and John R. ("Ran") was Attorney General of Virginia during Lincoln's revolution. NEITHER of these REMARKABLE sets has ever been reprinted. THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA IN 1787. 5 volumes. 1836; edited by Johnathan Elliot. Both President Davis and Vice President Stephens quoted often from this set in their own books. A VERY good set to show what the people in each state thought about the nature and form of our original American governmental system. In modern print by Lenox Hill Publishing and Distributing Corp. (Burt Franklin, Publishers) 235 East 44th. street, New York, N.Y. 10017. STATE DOCUMENTS ON FEDERAL RELATIONS: THE STATES AND THE UNITED STATES, 1900 (1906) edited by Herman V. Ames. In modern print (1970) by Da Capo Press, Inc., 233 Spring Street, New York, N.Y. 10013. HIGHLY recommended to me by a personal letter from Professor C. Gregg Singer, who wrote A THEOLOGICAL INTERPRETATION OF AMERICAN HISTORY, 1964 (revised edition, 1981), Presbyterian and Reformed Publishing Co., Phillipsburg, New Jersey 08865; a rather remarkable book in it own right! Professor Singer is an "old school" Presbyterian; and his book helps explain the onslaught of the anti-Biblical/pro-Socialistic attitude and beliefs of those Northern Ministers who led the attack on our original government and society; and used abolitionism as an excuse. As an "old school Baptist" (AND a "Jeffersonian Republican of the old school") I do NOT agree with certain of Professor Singers "interpretations;" but his book is WELL worth reading never-the-less! THE FEDERAL GOVERNMENT: ITS TRUE NATURE AND CHARACTER; BEING A REVIEW OF JUDGE STORY'S COMMENTARIES ON THE CONSTITUTION

OF THE UNITED STATES, 1840, by Abel P. Upshur. A VERY informative little book; all the more important because Judge Story presented what is now the politically correct view of his topic, which was established by force under Lincoln. It is in modern print by the same press as Sage's book. The Invictus press also has recently printed a very important chapter from Volume one of Jefferson Davis' set under the title: STATE SOVEREIGNTY. Mr. Davis' entire set is also in modern print by: Da Capo Press, New York, 1990. (address: above.); and the two volume set by Vice President Alexander H. Stephens (A CONSTITUTIONAL VIEW OF THE LATE WAR BETWEEN THE STATES, 1867; 1872) is also in modern print by Sprinkle Publications, P.O. Box 1094, Harrisonburg, Virginia 22801.

There are so MANY good titles now available; and SOME for the first time in over a century. And, hopefully, some of the other older titles will ALSO be brought back in the not-too-distant future. NO war can determine what is right and what is wrong; and there are just too many of us today who STILL believe in our ORIGINAL type of American Constitutional Liberty for the "Cause" to actually be considered "Lost!" we have tried Mr. Lincoln's form of government for OVER 100 years now—and it ISN'T WORKING correctly by nearly ANY standard! why NOT try returning to our ORIGINAL form of government—retaining any REAL improvements which might have been adopted since the War? It wouldn't be a painless transition—but then it wasn't exactly painless when Lincoln and his crowd forced our ancestors to abandon what our earlier American Founding fathers had given to them, either!

There are other titles I'd like to list here, but these will suffice through the Invictus Press for now. Contact me if you'd like!

Sincerely

Larry L. Burton

TEXTS.

"This Union must be a voluntary one, and not compulsory. A Union upheld by force would be a despotism." — W. H. Seward, 1844.

"The States *were*, before the Union *was*. * * Our federal Republic forever must exist through the combination of these several free, self-existing, stubborn States." — W. H. Seward, 1865.

"The only parties to the Constitution, contemplated by it originally, were the thirteen confederated States." — D. Webster, 1819.

"The Constitution is the only bond of the union of these States."
D. Webster, 1850.

"The States are united, confederated." — D. Webster, 1850.

"The States never conceived the idea of consolidating themselves into one government," or of "ceasing to be Maryland and Virginia, Massachusetts and Carolina. * * I hope never to see the original idea departed from." — D. Webster, 1852.

"A Union of co-equal sovereign States requires, as its basis, the harmony of its members, and their voluntary co-operation in its organic functions."
E. Everett, 1860.

"The Constitution in all of its provisions looks to an indestructible union of indestructible States." — Federal Supreme Court, per Chase, C. J., 1868.

"In fact and in theory, the Union is an association of States, or a confederacy." The States are "the parties to the compact." — Hamilton, *Federalist*, 9 and 85.

"The States are regarded as distinct and independent sovereigns * * by the Constitution proposed." "Each State in ratifying the Constitution is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, the new Constitution will be a *federal* and not a *national* Constitution." "The federal and state governments are in fact but different agents and trustees of the people, intrusted with different powers." —
Madison, *Federalist*, articles 40, 39, and 46.

"The business of the federal convention * * comprehended the views and establishments of thirteen independent sovereignties." — James Wilson.

"The Constitution was a compact, not between individuals, but between political societies * * each enjoying sovereign power, and, of course, equal rights."
Gouverneur Morris.

"The government of the United States was instituted by a number of sovereign States for the better security of their rights." — Roger Sherman.

"The sovereignty and jurisdiction of this State extends to all places within the boundaries thereof." — Constitution of New York.

"The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent State."
Constitution of Massachusetts.

"The American Flag must wave over States — not over provinces."
Rutherford B. Hayes.

See also the statements of the leading fathers herein. p. 42-50.

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"It [*i. e.*, the republic of republics] is an assemblage of societies that constitute a new one, capable of increasing by new associations." — *Montesquieu.*

"They will form together a federal republic." "The sovereignty of each member is preserved," though there is "constraint on the exercise of it, in virtue of voluntary engagements." — *Vattel.*

See page 332 of this volume; also page 42 *et seq.*

BOSTON:
LITTLE, BROWN, AND COMPANY.
1881.

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University Press:
John Wilson and Son, Cambridge.

PREFACE.

THE theory of this work is precisely that upon which the anti-slavery sentiment of the country based itself, in opposing the extension of slavery, the fugitive slave law, and, indeed, slavery itself; while it supports the action (except nullifying), of those states which have from time to time defended themselves against federal excesses.

The author is one who never held or wished for office; who belongs to no party; and who pleads to save the palladium of all his blessings — his commonwealth.

In 1865, Andrew Johnson, filled with the motives and feelings of the war, and surrounded by detectives, spies, Stantons, and Holts, believed Davis to be a traitor, who sought the destruction of "the government," starved federal prisoners at Andersonville and elsewhere, and procured Lincoln's death.

It was then that he uttered the celebrated threat of "making treason odious by hanging traitors"; and for a time, even if it was not contemplated, it was feared that a military commission would be used as the machinery of trial and punishment. But, as Davis and the other leading confederates were prisoners of war, and protected by the *jus gentium*, the policy seemed to be adopted of turning them over to the civil authorities, for trial — if conviction could be assured; or for other disposal, as hereafter indicated.

The North was full of bitterness and vengeful spirit. Sentiments like the following, were heard from many leaders: "Rebels have no rights but to be hung"; "The army has convicted — only execution remains." But the soberer judgment of pre-

dominant men was more humane, and the moral sense of the country and the world favored a trial of some sort, though few comparatively could patiently contemplate the chances of acquittal. The following from the New York *Times* shows the prevailing views and feelings, and, at the same time, the danger of losing the great principles involved. Advocating civil trial, and presuming it would come, that journal said: "We have no fear that Jeff Davis will be acquitted on the merits of the case, as they will be expounded by the chief justice, who will try him. . . . If Davis is convicted, the constitution, as understood by the loyal people of the land, will be vindicated, and the supremacy of the national authority forever established in law, as well as fact."

Presuming that there must be a large class of Sewards, Chases, Greeleys, Gerrit Smiths, Bateses, Everetts, Trumbulls, Stansberrys, etc., who, as peace grew older and reflection came, would arise and influence public opinion, the author sent from London, in the summer of 1865, the first edition of this work, in the shape of a "protest" against the trial of the confederate chiefs by military commission; and an argument — which was really that of the fathers, the author merely compiling — showing that the law and the testimony were in their favor, and that they could not be convicted even by a court and jury. It was sent to all the conspicuous men in and out of the administration.

The following telegram to the Philadelphia *Ledger*, is selected to show the estimate in which the work was held by some in Washington: "A most important argument has been received by the president from London, in which are set forth the reasons why Davis cannot be convicted in any court, of the crime of treason," etc., etc. Concerning it, Mr. Charles O'Conor wrote the author, Dec. 10, 1865: "If upon the numerous points that any lawyer can readily see in the case, I had so admirably prepared and overwhelmingly conclusive a brief as the protest, my task [of defending Davis] would be slight indeed." And the Mobile *Register* noticed it as follows: "This treatise is an extraordinary work, considering that it is written by an English lawyer. It exhibits profound acquaintance with the history and philosophy of the constitution."

It should be explained, *en passant*, that the work purported to be the monograph of P. C. Centz, Barrister.

Some have thought, perhaps erroneously, that the president and his advisers were, by it, induced to pause, and convoke leading jurisconsults; who actually met, and after much study and thought, reported that Davis must be civilly tried if at all; but that probably he could not be convicted. Among the statements on this subject, the following is selected from a most interesting letter, written in Richmond to the Norfolk *Virginian*, and published in 1873: —

"Another event of great historical interest, in which Judge Clifford participated, was the solemn consultation of a small number of the ablest lawyers of the North, at Washington, *a few months after the war*, upon the momentous question as to whether the federal government should commence a criminal prosecution against Jefferson Davis for his participation and leadership in the war of secession. In this council, which was surrounded at the time with the utmost secrecy, and which has never yet been described, was U. S. attorney-general Speed, Judge Clifford, William M. Evarts, and perhaps half a dozen others, who had been selected from the whole northern profession for their legal ability and acumen; and the result of their deliberation was the sudden abandonment [of the idea of prosecution], in view of the insurmountable difficulties in the way of getting a final conviction, which were revealed by their patient study of the law bearing upon the case."

Notwithstanding the "sudden abandonment" in secret, change of intention was not allowed to transpire; and the defence were compelled to keep in readiness until 1869. During all this pendency of the case, President Johnson and his cabinet seemed to evade a trial by jury, but meanwhile to aim at getting the states' supreme court to lay down a *national* law of treason, so as to have a *national* control, by a *national* government, of *national* citizens, under the penalties of *national* treason; thus establishing that "absolute supremacy," of "the government" over allegiant states and citizens, which the Philadelphia convention of 1866 anticipatorily declared. Henry J. Raymond, the writer of the expression quoted above from the New York *Times*, was the writer of the address of the said convention.

In a letter from Mr. O'Conor to the author in London at the close of 1865, is the following: "To procure a forensic discussion of the point so ably argued by you, and a pre-arranged judicial determination of it by the supreme court, against the South, and in favor of his national government, has long been a favorite project with Mr. Johnson. He is persistently urged to it by his most intimate adviser; and it is distinctly avowed in the message just delivered. For a long time, those who possess means of knowing the intent of the president and his cabinet, have, almost without exception, asserted very positively, that Mr. Davis would be tried in a civil tribunal."

In the course of time, Mr. Davis was turned over by the military to the civil authority; and, finally, under a *habeas corpus*, admitted to bail, with Horace Greeley, Gerrit Smith, and others as bondsmen, early in 1867; and thenceforward a show of desire and readiness to try was kept up; insomuch that Mr. O'Conor did not abate his preparedness till the fall of 1868; when, on a motion to quash the indictment, the judges differed, and the case was certified up to the states' supreme tribunal, where it was finally extinguished by President Johnson's amnesty proclamation, without any laying down (or prostrating?) of the law by the said tribunal.

To some, the prosecution seemed aiming to get *around* trial by jury, and *before* the supreme court, in order to merge the case in the aforesaid "pre-arranged" decision; but the author opines with diffidence, that Seward and Chase secretly managed to prevent that predetermined decree, which necessarily and fatally impugned statehood; they, if we judge from their history and declarations, being nothing if not devotees of the sovereignty of the American states.

These great men knew that commonwealths (New York and Ohio for example) were integrally the citizens thereof, and that the fealty of the citizens was the life of the state; and that a national law of treason on national citizens, was absolute destruction of what they themselves called "indestructible states." Hence it is presumable that they were opposed to the above-mentioned design of the president.

The adverse sentiment was aided more or less by a large class

of northern minds, who steadily opposed, not merely the military commission, but any trial. Conspicuous among them were Gerrit Smith, Horace Greeley, and ex-governor John A. Andrew — the latter expressing himself as follows, as is stated in the letter to the Norfolk *Virginian*, before mentioned: "It cannot be done. The criminal law has no application here. . . . When a whole people commit an act, rash, impolitic, and direful though it may be, . . . it is impossible to consider the criminal law as being framed to meet the case." Like Edmund Burke, these men "knew of no way to frame an indictment of a whole people."

Meanwhile, time was healing hurts, assuaging sorrows, mollifying resentments, wearing away antipathies and prejudices; and forgiveness and conciliation were copiously welling up from the bottom of the people's hearts, so that finally, in 1868, Mr. Davis's condemnation, once an easy task, became no longer possible; and the case, as heretofore stated, came to a happy end.

What a change! Underwood, a year or two before, had said to a committee of congress, in reply to an inquiry if a jury could be packed — "It would be difficult, but it could be done. I could pack a jury to convict. I know very earnest, ardent union men in Virginia." Such sentiments did not, however, long or widely prevail; and in December 1868, the New York *Tribune* doubted if it was ever possible to convict Davis, "unless the jury had been packed," and "every democrat excluded." Peace, with benign wings, was brooding over the land.

Providence, time, the better feelings of men, their sober second thoughts, and a myriad of moral forces, ever co-work to preserve these glorious commonwealths; and they now stand in serene and silent majesty, observed of every eye, and invoking the loyalty of every heart. Seward and Chase both, after the war, with emphasis proclaimed the states to be "free," "stubborn," "indestructible." Their life is independent; above "government"; and they will not "down" at the bidding of murderous usurpation, for their being is that of the people; and the self-defence of both — the first law of nature — is identical. Perverters should cease to "wreck themselves against necessity," for, as long as freedom is a part of God's smile on this continent,

the state will be the political form of the people. Bryant's apostrophe to liberty applies to the commonwealth: —

> " . . . Power at thee has launched his bolts,
> And with his lightnings smitten thee:
> They could not quench the life thou hast from heaven."

THE MODE AND TESTIMONY OF THE WORK.

Before concluding, it may be well to say that, wishing for criticism and correction of error, the author makes no apology for the manner of performing his task; but takes occasion to say, that, desiring everybody to read and believe, he has aimed to use simple, direct, and untechnical language, intelligible to all classes, and to pile up evidences on every contention of the book, so as to make doubt impossible. Chapter VII. of Part I., for example, decisively proves what all the fathers considered, and the people intended, our polity to be. And for such proofs, the statements of the deputies who devised, and the people who ordained it, are used, rather than the *dicta* of the administering agents, who became interested alike in its success and in their own further emoluments, and who began those assumptions of ungranted powers, which have since well-nigh proved fatal.

And upon this matter, it is well further to state, that as the great inquiry is one of fact, much care is taken to select the best testimony. After the federal system went into effect, party spirit, the desire of office, and the possession and use of public power and money (so perverting to the judgment and lowering to the morals), made the administrators of the government tend to become unfit for witnesses; and it is deemed unjust to themselves, as well as to the cause of institutional liberty, to use their statements. Indeed, if tested by interest, courts would reject them. Therefore the views of Hamilton, of Madison, and even of the great and good Washington, are not used, where they expressed them as officials, interested in the successful working of the great experiment.

Henry, Martin, Lowndes, Yates, Lansing, *et id omne genus*, are rejected, because, as enemies, they appealed to the people's fears, and denounced the system — not only making erroneous or over-stated objections, but yielding in no degree to decisive

refutations, made by those who were in the convention of 1787, and knew the real intent of that body, as well as the meaning of the instrument.

Jefferson is not cited because, being abroad, he did not participate in the making of the plan; and because, upon its being put in operation, he gradually became a heated partisan. The resolutions of '98 and '99" and Madison's report, are dispensed with, because, instead of being the source of state-rights doctrines (as their devotees seem to suppose), they are simply deductions or corollaries from the state-rights facts adduced herein, which cover the whole ground of (as well as precede and include) the constitution itself. No use is made of the masterly arguments of those great men, Tucker, Taylor of Caroline, or Calhoun, as they are partisan, and furnish no apposite facts. Nor is the president, the congress, or the federal supreme court cited, since they can testify to nothing whatever to help us us to a *vere dictum*, on this pure question of fact. Their *dicta* cannot even dent or abrade an actuality, let alone destroy it. Nor can they give decisions on disputes as to political authority between *the states* and the federal *agency of the states*, a part of which agency the said functionaries are. Their jurisdiction can only be of questions "*under*" the constitution of the states, and cannot reach those affecting the political existence and sovereignty of its makers, — such questions being most certainly *above* it — no matter whether the said makers are the people *as a nation*, or the people *as states*.

In short, no facts or authorities are used in the book, originating after the federal system was set in motion. The entire draught is from the head-spring — not a drop from the turbid river below! But it is well to say here that current practice, continued usage, and fit and timely explanation (ever and precisely based on reality and truth, with construction of doubts always and inexorably in favor of original authority) must be allowed due weight in the exposition of our polity.

THE SECOND CENTURY OF THE FEDERAL SYSTEM.

We have now a full retrospect of our departed century, as to its results on our political institutions. Its lessons are imperious,

and if we fail to learn and utilize them, we may as well give up self-government, and cry out, as did the Hebrews, "Give us a king," to save ourselves from the war and woe of his inevitable coming.

But in the opening of the new cycle — the second century of "federal liberty" [1] — we have some good auspices. Certain subjugated and degraded states have recovered that equality, vital to a voluntary union of republics; and the head — alike of the federal agency and of the supposed centralistic party (President Hayes) — declares that "*The American flag must wave over states and not over provinces*"; which can only mean, that the great American revolution, from provinces to states, is not to be annulled; that henceforth our union will be an association of equal commonwealths, governing themselves through agencies with entrusted powers; that the means of enforcing said authority is "the mild and salutary coercion of the magistracy" [Federalist]; and that the soldiery is no more a part of the government, than the switch or ferule is a part of the parent or schoolmaster, but is an instrument of the civil power, to be used as a last resort.

IN CONCLUSION,

it is to be hoped that the American people will speedily come again to know and feel that they are, in form, and life, and action, an association of republics; and to recognize their duty of preserving their sacred heritage and trust of liberty against cen-

[1] This phrase was used by James Wilson, to express the liberty that free states enjoy under their league. "The definition of civil liberty," said he, "is, briefly, that portion of natural liberty, which men resign to the government [i. e. to society], and which then produces more happiness than it would have produced if retained by the individuals who resign it; — still, however, leaving to the human mind the full enjoyment of every principle that is not incompatible with the peace and order of society. Here I am easily led to the consideration of another species of liberty, which has not yet received a discriminating name, but which I will venture to term federal liberty. This, sir, consists, in the aggregate of the civil liberty which is surrendered [i. e. delegated] by each state to the national government [i. e. to the United States]; and the same principles that operate in the establishment of a single society, with respect to the rights reserved or resigned by the individuals that compose it, will justly apply in the case of a confederation of distinct and independent states." [See *Connecticut Courant*, Dec. 24, 1787.]

tralization. The fundamental laws, which the states have severally and federally established, seem once more to be in accord with the tones of the old bell which, on the 4th of July, 1776, "proclaimed liberty throughout the land." All patriotic hearts and hopes are in harmony, and our only political discords are the usurpations and excesses of those ephemeral creatures who fly, for a measured while, with imparted strength, in the sunshine of popular favor — creatures who, as subjects and chosen servants of the commonwealths, are sworn to keep within those written limits which they daily transcend.

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PART I.

A GENERAL VIEW.

THE REPUBLIC OF REPUBLICS.

PART I.

A GENERAL VIEW.

CHAPTER I.

INTRODUCTORY.

THE American colonies of England were, at first, so many little flecks of civilization shining on a pagan shore, like glow-worms in the dark. These little societies were then separated, each from the others, by hundreds of miles of unbroken forest. All grew rapidly, spreading from their respective centres; but there was no political coalescence. The mental eye follows them in all their separate histories, until they finally appear as stars grouped in a glorious constellation, each shining with unborrowed light.

Each from the first was organized and governed by the sovereign power of England, separately from the rest. Such organized colony or province was a body, fit for the indwelling of a soul. To make a state, the peculiar and essential characteristic was required, which in political philosophy is recognized as distinguishing a state from a colony, province, county, or other subdivision of a state — the absolute right of self-command or self-government in all things; so that when independence was consummated, the aforesaid body became instinct with its own soul. In other words, it became a sovereign state.

We may compare these colonies to so many branches of a great and vigorous tree, each with the vital energy to live and thrive independently, if lopped off and planted in its own free soil. When severed by rebellious swords, each "became a living soul," and each necessarily possessed sovereign political will over its own territory and people. Sovereignty could not be out of it, for there was no political organism and no people, other than these thirteen commonwealths. Each was untrammelled and free, like an eagle that soars away from his broken bonds, and sees no shadow of power between him and the sun!

The colonies associated themselves to effect their independence, and made the celebrated declaration of July 4, 1776, as the thirteen united states of America; but, like thirteen persons united to effect some object, they retained their respective individualities; and George III. could but have acknowledged, as he did in 1783, at the instance of the American Commissioners, that each state was "free, *sovereign*, and independent." And it was quite natural, nay, unavoidable, that these states should all mutually declare, covenant, pledge, and guaranty, as they did do, by their federation or solemn league, subsisting at the moment each entered the present union, that "each state retains its *sovereignty* and independence." But it must be noted, that sovereignty was not caused by the declaration, the acknowledgment, or the compact, or all of them together, for these instruments merely declared — and bound the declarants to respect — such entity or fact. In truth, sovereignty only began to exist at the moment the power of the state predominated over all opposing forces, and became supreme power; and the precise time of its origin may be as difficult to determine, as is that of the soul's existence in the human child. Suffice it to say, it existed in the state, or not at all; for there was no other possible body for it to dwell in than the organized body of people called the state.

Each one of these states, thus originating and thus characterized, was a republic, that is, a community of people, with the absolute right of self-government in all things. This sovereignty of the state is indivisible, and remains integral, even though all the powers of government be delegated. A person may give a thousand commands, or delegate a thousand powers, concerning what he owns, or of right governs, without diminishing his ownership or right of control. So with a state. For instance, the agents of the sovereignty of England exercise the powers of government throughout her world-wide dominions, while the *sovereignty* remains enthroned at home, — the absolute will of the state.

"The Constitution of the United States of America" was made or constituted by the concurrent action of the thirteen pre-existent states referred to, each of which, during all the time of that action, "retained its sovereignty, freedom, and independence," as was declared by all of them in their solemn league and covenant, — the Articles of Confederation. The instrument calls itself a "constitution for" "united states," and characterizes the arrangement made therein as a "union of states." For instance, Article I., section 2, speaks of "the several states which may be included within this union;" Article IV., section 3, declares that "new states may be admitted into this union;" and Article IV., section 4, includes the phrase, "every

state in this union." Moreover, the said constitution declares that it was to be "established," and take effect, "between the states so ratifying the same." Nay, more; its powers were only delegated, and hence must be wielded by trustees and agents, chosen by, and subordinate to, the delegating states, while the "powers not delegated are reserved to the states respectively, or to the people" of the same. There is no evidence, or even hint, of any change of character of the states; but, on the contrary, they are named in the constitution as absolute and complete political bodies, which are necessarily the parties to, and the actors under, the federal system. And, finally, all elective power and right was inherent and absolute in the people composing these states, as their constitutions show; and moreover, they declared in their federal constitution that they were, as states, to keep and exercise the said elective power. It is provided in Article I. that "the people of the several *states*" are to choose the "representatives;" and that "each *state*," "by the legislature thereof," is to elect senators. Article II. provides that "each *state* shall appoint" presidential electors. These congressmen and presidential electors are citizens and subjects of their respective states, and in their vicarious and representative character, they appoint all other federal officers. So that here, in the constitution itself, we have the most positive and absolute proofs that the states are sovereign over the federal government, this being their mere agency, or, in other words, *a part of their machinery of self-government.*

If the states are equal, if the constitution and the resultant government are made by their will, and if they elect their own subjects or citizens as functionaries, there can be as little doubt of their sovereignty as there is that GOD reigns supreme over His creations. And not a word of American history, or a principle of governmental philosophy, is inconsistent with this view. So plain are these facts to thoughtful and conscientious men, that the government's claim of "absolute supremacy" over allegiant states, voiced in the thunders of the recent war, sounds like the knell of that constitutional freedom of which the states were the very citadels. The founders of American liberty taught the capacity of our people for self-government, or, in other words, that all questions could be settled as they arose, by reason, with justice, and without force. They said the system they founded was fraught with the blessings of peace; but while their footsteps are yet echoing in "the corridors of Time," and while we are extolling their patriotic wisdom, boasting of the precious inheritance they have left us, and singing pæans to Freedom, the very constitution they founded on these principles, is perverted from its purpose, and employed as the means of destroying a million of our brethren,

filling the land with mourning, annihilating at least one-half of the property of the country, creating an inextinguishable and crushing debt, depriving one-third of our free and equal states of the last vestige of their equality and freedom, and establishing a precedent which, if placed upon the generally assumed basis and followed, subjugates all the states to the "absolute supremacy" of a central and irresponsible power, and destroys constitutional liberty. For if "the government" has "absolute supremacy" over the states that made it, as the Philadelphia Convention of 1866 declared, its unlimited right of taxation, and of raising armaments, enable it to control all states and sections of states at will, and, finally, to establish an empire. In truth, this has already been done. Whenever there is "absolute supremacy" in "the government," there is no limit to its will or discretion. Unlimited power in human hands may become as gross a tyranny as could be exercised by a monster, with the soul of Mephistopheles in the body of a tiger; for man has the capacity, and only requires the downward training, practices, and incentives, to become a devil. Satan was once an angel of light. Nero, and other tyrants, and associations of tyrants, possessing absolute supremacy, rivalled him as nearly as human infirmities and trammels would permit. It is vain to talk of civilization and Christianity as restraints. Bad men use these as the most potent means to their ends. It is vainer to talk of constitutional restrictions, when rulers by perjured usurpation act — and glory in acting — in the infinite field of discretion "outside of the constitution." And it is vainest to suppose that the phrase "according to the constitution" is other than a meaningless one, as long as the phrases, "absolute supremacy in the government," and "state sovereignty is effectually controlled," are recognized as constitutional ones; for "state sovereignty" is precisely "the sovereignty of the people," the said people having never been organized for government, and having never exercised political authority except as states; so that if "state sovereignty is effectually controlled," the sovereignty of the people is effectually controlled, and republican government is at an end! It is simple mockery to reply that the "absolute supremacy" is, by the nation, limited to the grants of the constitution, or, in other words, that the states are sovereign, except as to the powers surrendered, when the twin dogma is, that the federal government is the final judge of the extent of its powers. Our worst men often get the highest places, and exercise this final judgment; their consciences are equal to any occasion; and they gain what they wish, by ignoring, or rather violating, their oaths, and justifying themselves by the tyrant's plea — necessity. Indeed, we have recently seen that the people's "trustees and agents" called themselves "the

Government;" claimed absolute supremacy and regal prerogatives; dissolved states and made new ones; changed the state governments; removed the highest officers thereof; gave, and took away, voting power; and, in short, did many revolutionary enormities "outside of the constitution." These things, which every officer of the government was sworn not to do, were really treasonable to the last degree, for they destroyed the existence of the states, and dethroned the sovereignty of the people who were the states, and who politically existed, and politically acted, only as states. Suffrage is — humanly speaking — "the pearl of great price" in republican freedom. It is vital to liberty, and must be absolutely controlled by the people who own it, and not by any government. The voting power belongs, of original and absolute right, to the community called the state, who are the real government — what we call "government" being the agency thereof; and a republic being a government of the people by the people. Says MONTESQUIEU (I. *Esprit des Lois*, p. 12): "In a democracy, there can be no exercise of sovereignty but by the suffrages of the people, which are their will. Now, the sovereign's will is the sovereign himself; the laws, therefore, which establish the right of suffrage, are fundamental to this government. In fact, it is as important to regulate, in a republic, in what manner, by whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he is to govern."

The original voting power is the people composing the society or state, in whom, as every state constitution declares or implies, "all political power is inherent." The derivative or delegative voting power is an endowment, by society or the state, of individual members designated and described as voters, in the constitution of the state. As Montesquieu says, "the laws which establish the right of suffrage are fundamental to the government," and hence they are found only in the fundamental laws of the states, established, of original right, by sovereign power. It is plain, then, that if *the government* (whether state or federal) controls or disposes of suffrage, without warrant in the constitution, it strikes at the very vitals of the republic, from which it derives its entire existence and power, and commits perjured usurpation, as well as flagrant treason. It is equally plain that an insidious and fraudulent revolution is now going on, tending to subjugate the people of this country — just as all other free peoples have been — to the "absolute supremacy of the government!"

Would to GOD that I could sear upon the brain and heart of each of our states and citizens, the words of that immortal statesman, that best English friend of American liberty, EDMUND BURKE! "This

change," said he, "from an immediate state of procuration and delegation, to a course of acting as from original power, is the way in which all the popular magistracies of the world have been perverted from their purposes."

Oh that our people may heed the warning, and stay the hand of Fate, which is even now engraving upon the walls of time, that

> "Our own,
> Like free states foregone, is but a bright leaf torn
> From Time's dark forest, and on the wild gust thrown,
> To float awhile, by varying eddies borne;
> And sink at last forever!"

CHAPTER II.

PERVERSION.

AS "the government" now claims "absolute supremacy," and exercises and enforces the same, whenever it thinks "necessity," "the safety of the republic," or even "good policy" requires it, "we, the people," have obviously lost our freedom. And we can only retake and enjoy it, in its active sense of self-government, by reasserting and re-establishing the original federal plan, and henceforth keeping our general government within our "supreme law" establishing it, and compelling the said government to work, as our agency, under our sovereignty, with the legal force originally contemplated — the same that the state governments work with — and that needs no military force, except to aid the civil authority, and put down any banded criminal opposition thereto. The states being the sole sources of all power, federal military force against any of the people, without, or against, state authority, is treasonable.

To impress upon the reader, at this point, the absolute sovereignty of the people, and the subordination of their governments, as well as the perfect similarity, in created existence, character, and vicarious authority, of the federal and state governments; and, moreover, to get an absolute and unquestionable basis for further exposition, let us have the sacred testimony of the fathers, as to the seat or residence of original, absolute, and uncontrollable authority, *i. e.* sovereignty. It is well to observe here, that every state constitution or bill of rights expressed or implied that "ALL POLITICAL POWER IS INHERENT IN THE PEOPLE," so that the fathers did not, in the following extracts, express their opinions merely, but truths — the very institutes of freedom.

The Doctrine of the Fathers. — Said HAMILTON in the convention of New York, in 1788, speaking of the proposed system: "What is the structure of this government? . . . The people govern. They act by their immediate representatives." He evidently knew of no "absolute supremacy" in "the government." JOHN JAY, of New York, the first Chief Justice of the United States, wrote as follows, in his

"address to the people" of that state, in favor of the federal constitution: "The proposed government is to be the government of the people. All its officers are to be their officers, and to exercise no rights but such as the people commit to them. The constitution only serves to point out that part of the people's business, which they think proper by it to refer to the management of the persons therein designated." Does not that mean the constitution of an agency? JUDGE PARSONS, one of the greatest statesmen and jurists of Massachusetts, in the ratifying convention of that state, characterized the federal government as "a government to be administered for the common good, by the servants of the people, vested with delegated powers, by popular election, at stated periods." "The federal constitution," continued he, "establishes a government of this description, and, in this case, the people divest themselves of nothing; the government and powers which the congress can administer, are the mere result of a compact made by the people." "The people divest themselves of nothing," said Judge Parsons; that is to say, they govern themselves, using an agency for that purpose — *Qui facit per alium, facit per se.* But our modern interpreters say that "the government" has "absolute supremacy," and can enforce "the allegiance" of the very states that gave it existence. Said Gen. C. C. PINCKNEY, of South Carolina, in the ratifying convention of that state: "The sovereign or supreme power of the state, with us, resides in the people." "The general government has no powers but what are expressly granted to it." "By delegating express powers, we certainly reserve to ourselves every power and right not mentioned in the constitution." Said CHANCELLOR PENDLETON, the president of the ratifying convention of Virginia: "The people are the fountain of all power. They must, however, delegate it to agents, because from their number, etc., . . . they cannot exercise it in person. . . . When *we* were forming *our* state constitution, *we* were confined to local circumstances. In forming a government for the union, *we* must consider *our* situation as connected with our neighboring states." Said JOHN MARSHALL, afterwards the great judge, in the same convention: "Those who give, may take away. It is the people that give power, and can take it back; what shall restrain them? They are the masters who gave it, and of whom the servants hold it. . . . Are not Congress and the state legislatures the agents of the people?" Said CHANCELLOR LIVINGSTON, in the ratifying convention of New York: "They, the people, acknowledge the same great principle of government, . . . that all power is derived from the people. They consider the state and general governments as different deposits of that power. In this view, it is of little moment to them, whether that portion of it which

they must, for their own happiness, lodge in their rulers, be invested in the state governments only, or shared between them and the councils of the union. The rights they reserve are not diminished, and probably their liberty acquires additional security from the division." Said JAMES WILSON, who was the leading statesman of Pennsylvania in both the federal and state conventions: "The supreme, absolute, and uncontrollable power is in the people before they make a constitution, and remains in them after it is made." "The absolute sovereignty never goes from the people." The FATHER OF HIS COUNTRY wrote to his nephew, Bushrod Washington, Nov. 10, 1787, as follows: "The power, under the constitution, will always be in the people. It is entrusted to their representatives, . . . their servants. . . . They are no more than the creatures of the people." Said MADISON (who is often called the "Father of the Constitution," and who certainly was "its ablest expounder"), in Article 46 of the Federalist: "The federal and state governments are, in fact, but different AGENTS AND TRUSTEES of the people, instituted with different powers. . . . *The ultimate authority* [*i. e.* the "absolute supremacy"] wherever the derivative may be found, *resides in the people alone.*" And he said, in the convention of Virginia, in reference to the parties to the union, that the phrase "the people" did not mean "the people as composing one great society, but the people as composing thirteen sovereignties." And it may be stated here that generally, when the fathers used the phrase "the people," constitutionally, they meant the people of the sovereign states, that were the actors in making the federative union. They could not have meant otherwise, for the simple reason that the people were the states, and the states were the people. In his speech of 1833, DANIEL WEBSTER, the head of the Massachusetts school, decisively admits the above, and destroys the basis of himself and school as follows: "The sovereignty of government is an idea belonging to the other side of the Atlantic. No such thing is known in North America: . . . with us all power is with the people. They alone are sovereign; and they erect what governments they please, and confer on them such power as they please. None of these governments is sovereign." No framer of the constitution ever did, or could, characterize the federal functionaries they were providing for, otherwise than as the states themselves did, as "substitutes and agents," who were to be and remain as "citizens" and "subjects" of the states, being elected by these to execute their will. They considered "the people" to be absolutely sovereign; the states to be "the people;" all governments to be created, derivative, and vicarious; and all of such agencies to be endowed only with *trusts* of power, and to possess, by virtue of imparted authority alone, a coercive jurisdic-

tion over the individual members and subjects of the states. No one ever hinted that these governments would or could have any original or inherent power, or sovereignty, *i. e.* "absolute supremacy" over states and people. And yet, as has been shown, the so-called statesmen and expounders of the day venture to assert that *the government is "absolutely supreme," and holds the states in "allegiance."*

The Doctrine of the Perverters. — For immediate and direct contrast, let us here note the leading dogmas of the Massachusetts school of so-called expounders. Claiming to cite the fathers in proof, they teach that oneness of will and action, and not a concurrence of wills, caused the constitution; that thereby the American people, though once states, have become a national unity — an undivided nation, the apparent subdivisions of which are provinces or counties — mere fractions and not constituents of the nation; that the constitution being "supreme law of the land," "the government" has "absolute supremacy," and a right to exact and enforce "the allegiance of the states" to it; and finally, that the commonwealths of New York, Massachusetts, Pennsylvania, Virginia, *et als.* have no *status* or rights except such as are reserved and assigned to them in the constitution; or, in other words, that they are reduced to counties or provinces. These ideas are expressed in Lincoln's first inaugural; in the address of the Philadelphia Convention of 1866; in Professor Jameson's work, called "The Constitutional Convention," in the New York Times and New York World, and substantially in Webster's speech of 1833. It will be duly seen that all history, all the words of the fathers, all the records of the states, and all the archives of the country show that these statements are absolutely untrue! Such teaching assumes that we have no political beings called states; no "*federal* constitution;" no "united states;" no "union of states;" and no "citizens of states," as the constitution itself teaches; but that *the states are consolidated into one state*, and "the government," having "absolute supremacy," is to control and protect not merely the people, but the states they compose, as subjects. In other words, we have *an empire* of which "the government" is *a corporate sovereign.* The action of "the government" has been precisely in accordance with these ideas. It has vindicated its "absolute supremacy" *vi et armis*, and coerced the states to yield their wills, and consider themselves in the future as aggregations of subjects, whose only rights are "reserved" in "the great charter" — the constitution; and who are privileged, as "groups of voters," to express their wishes for the consideration of "the government." In truth, if the people "accept the situation" the states are no more! Have we not chains already imposed upon us, so that the coming tyrant has but to rivet them, in order to complete the subversion of our polity?

The Self-Consolidation of "the Government." — While this fraudulent and treasonable destruction of states, and consolidation of their people into an undivided nation is going on, another radical and corresponding change is being wrought in the character and theory of "the government." Originally, a "senator" was a citizen and subject of a state, elected by her to execute her will; the "representatives" were such subjects, elected for such purpose by the people of the state; the senators and representatives were the delegation of a state to the congress of states; and they, with the executive and judicial officers (these also being elected or appointed by or for the states), constituted the general government. Thus we see that our states were a federation, and our general government purely a *federal* one. These separately elected, separately sworn, and separately responsible functionaries were sent by each state to act as individuals, with her authority for the good of all, *i. e.* to "provide for the common defence and promote the general welfare," and to be checks on all the other functionaries — the whole system being one of checks and balances, to prevent consolidation and tyranny. But these separately elected and vicarious creatures have effected the worst form of consolidation, for they now claim corporate capacity, independent existence, original right and authority, discretion outside of the constitution, regal prerogatives, and, in short, all the essentials of sovereignty. This self-formed corporate body has not merely an *esprit de corps*, but a oneness of will and purpose characteristic alike of a corporation, an oligarchy, or an autocrat; and the federal legislature, executive and judiciary, which were established as three absolutely independent institutions, to watch, and, if necessary, check one another, are now so unified as to act with one mind and will on a party platform: thus practically changing them into a vast and chronic conspiracy against the people's liberty, as any gang of men, acting with one mind in the hiding-places of the constitution and government, and constantly influenced by power and money, will gradually become. Is our polity to be revolutionized? Are we not in danger of revolution?

Cæsarism. — Under the forms of a republican federation, then, we have a consolidated empire, and a corporate despot, just as the Romans had "an absolute monarchy disguised in the form of a commonwealth." [Gibbon.] The parallelism will hereafter more fully appear.

The military-trained and military-souled war-secretary of the aforesaid corporate despot, Gen. Schofield, said in 1868: "In the Old World, it is said that the army is the safety of the empire; with equal truth we may say that the army is the safety of the republic." And Gen. W. T. Sherman said, in June, 1878, to the cadets of West Point: "Hayes

has the requisite nerve and determination. He knows his right, and dares to maintain it; and, what is more, the army, sworn to defend the constituted authorities, would see to it that he was sustained in the effort. The graduates of West Point are bound by their oaths to protect the government in fact, of which President Hayes is unquestionably the head." Explained by the events and revolutionary teachings and tendencies of the last fifteen years, all this means that what any army-backed despot or despotism chooses to style the republic, is to be preserved by the army, even against the people that compose such republic. It means that the "government" has the right to enforce its "absolute supremacy," *vi et armis*, in and against the will of a state, and that "so far state sovereignty," to use the words of Webster, "is to be effectually controlled." All this has the full and clear ring of Cæsarism, and it is consonant with Seward's phrase, "If they don't keep the peace, we must keep it for them." Both are symphonious with the "little bell," and seem to harmonize with a certain noted phrase of the imperative mood, "Let us have peace." Nay, more, it means that a Grant may become "a personified force-bill" — as Wendell Phillips called him — in our once free country, and, at will, declare unhappy Louisianians or New-Yorkers to be *banditti*, and leave them to the tender mercies of some future Sheridan, or other bold dragoon.[1]

Will our Peace be of Contentment or Force? — A military man can be satisfied with the "order" that "reigns in Warsaw:" but it was hoped that when President Grant came to realize that he was a civilian, instead of a soldier; that he must act by the written discretion of his sovereigns, instead of his own; that his duty was to execute ready-made civil laws for all the people, instead of enforcing peace with the bayonet in a discontented section; that our government is republican and not despotic; and, above all, that the President's judgment and conscience are under oath "to preserve, protect, and defend the constitution," and not under a mere partisan pledge to observe an electioneering platform, — he would have given to his ejaculation a hortative or precatory, instead of an imperative sense; and that his peace signified the disestablishment of the army, and the restoration of the absolute autonomy of the states, so that they, as the fathers intended, should govern themselves — locally by their home agencies, and federally by their federal one. Grant's constitutional oath — like that of every officer of "the government" — required

[1] In December, 1874, Gen. Sheridan went to Louisiana from a distant region, at once assumed command, and telegraphed to President Grant to declare the people, or part of them, *banditti*, and turn them over to him (S.) to deal with as such. The grounds of such intervention were mainly false, but approval of his view of things, and his conduct, was at once telegraphed back.

him to treat the states as sovereigns, and to consider armies and the commanders thereof, as not only subjects of the states, but raised and supported by their means, and moved solely by their authority. Nay, more, he was bound by his oath to see that such army was employed for defence, and not for attack of states; and that no federal soldier ever crossed a state boundary except by her command, permission, or call.

A president should but see and know and remember that the states are equal bodies. No power can be above them, because the constitution is their law, and the government is provided for in, and controlled by, the constitution. That instrument says, "each state shall appoint" presidential electors. For the said states, these electors chose General Grant. He was, then, the electee, servant, and agent of the said states, sworn "to preserve, protect, and defend the constitution." Hence, to keep his oath, he should have regarded and obeyed the states as his sovereigns, and dealt with Louisiana just as with Massachusetts and New York.

CHAPTER III.

HISTORY REPEATS ITSELF.

ABOUT forty years after the federal constitution went into effect, the perverters of the instrument began to teach, as the true meaning of it, *the identical assertions made originally by its enemies to prevent its adoption.* These charges were, that the constitution purported to be made by the whole people; that it consolidated all the states into one; and that, so far as its provisions went, "so far state sovereignty was effectually controlled" by "the government." Such was the fear among the people of the several states that these charges were true, that it was with the utmost difficulty that the friends of the system saved it from defeat. Washington, Hamilton, Madison, Wilson, Dickinson, Coxe, Sherman, Ellsworth, Adams, Ames, Parsons, Patterson, Livingston, Pendleton, Marshall, and many others now immortal, met and triumphantly refuted them, asserting and proving the absolute sovereignty of the states, and the vicarious, delegative, and subordinate character of the federal government. Even then the system barely escaped defeat in the larger states, Massachusetts adopting it by a majority of 19 in a convention of 355 members; New Hampshire by a majority of 11 in 103 members; New York by a majority of 3 in 57; and Virginia by a majority of 10 in 168; while North Carolina and Rhode Island rejected it by overwhelming majorities, though they subsequently joined the union. Indeed, Hildreth, the Massachusetts historian, thinks a majority of all the people of the states were opposed to the constitution.

Nathan Dane, of Massachusetts, one of the original enemies of the federal system, seems to be entitled to the honor of originating this fallacious exposition of the same. He was the Gamaliel of Story and Webster, and they were his faithful disciples. The three may be considered as the founders of the Massachusetts school, which has given ideas and arguments to what was first a faction, then an enterprising minority, and, finally, a victorious party, engaged in overthrowing constitutional liberty. The interpretations, commentaries, platforms, *obiter dicta*, etc., of this school, have finally given existence to a sham

or *simulacrum*, which is administered in place of the real constitution, and serves alike to mask usurpation and tyranny, and conceal from the people the lifeless remains of Freedom, —

> "For, vampire-like, fair freedom's foes,
> Have, in her slumber, sucked her life away,
> And left her throbless corse to carrion birds a prey!"

Such teachings legitimately produced the traitorous claim by the general government to the "allegiance" of, and "the absolute supremacy" over, "the united states," though the said government is a creation of the said states, and is personally composed of their citizens and subjects. And this theory was put in practice in the recent war, for the government subjugated the states, with the very existence, powers, and war-means it held from them, as a sacred trust, and which it was bound by solemn oath to use only for their "defence" and "welfare." In this we have, *par excellence*, the *crimen læsæ majestatis.*

Usurped Control of Suffrage. — Votes are franchises, given, of original right, by the people of a state, as a body-politic, to themselves as individuals, or such of themselves as they think fit. Such votes are franchises, created by original inherent power, and are instruments for, and the only means of, expressing the people's will. By and through them, the people give existence to the constitutions and so-called governments, these being personally composed of the citizens and subjects of the states. Hence a governmental right to control suffrage is absurd. As Montesquieu says: "The laws establishing the right of suffrage" are "fundamental" to the republic; and, consistently, we find all voting rights fixed originally, absolutely, and without appeal, in the organic laws of the states, by the sovereign people thereof.

But the federal agency now makes revolutionary claim to the "absolute supremacy" of the country, and to the "allegiance of the states." Its dogma is that of Lincoln, namely, that the former sovereigns of the country have no *status* or rights except those reserved in the national constitution. Of course the insignificant monads called votes are deep down in the all-swallowing maw. The people may still imagine their voting power to be above the government; but they will soon realize that they are merely to elect the directory of a corporate monarchy, and that they have about the same amount of self-government the English voters enjoy in electing their members of parliament, and barely more than the mockery which until recently amused, if it did not content, the suffragists of France. It is only a *mockery* of self-government, where any other authority than the people themselves can appoint or control the voters. Despotism can always

find tools enough to *play* the republic before the people, while imperial polity is being insidiously fastened upon them. The retention by the people themselves of this control is, *ipso facto*, the absolute autonomy of the original sovereigns of the country, under which the federal and state governments are alike agents.

The American "Divine Right." — In addition to the misteaching of the people above mentioned, the same pious fraud has deluded them that ever was used in the Old World to reconcile the people to the rule of kings. It is taught that our constitution, instead of being merely an earthly instrument, involving the political and business relations of states, is heaven-inspired, perfect, and to last forever. Buchanan and others asserted its divine origin, and its "essential attribute of perpetuity." It reasonably follows from such premises that "the government," — as such divine institution ought to, — possesses "absolute supremacy;" that "the states are bound in allegiance" to the government; and that "state sovereignty is effectually controlled," — the "states having no *status* or rights" but such as the nation, in its "supreme law," gives them. No stronger terms than these of Lincoln, Webster, and the Philadelphia Convention could possibly be used to express the sovereignty of the British, French, or Prussian governments over their provinces and people; and they are utterly baseless, and absurdly inconsistent with republican ideas.

The Imported Theory of the Social Compact. — The perverters try to delude the people into ignoring the real social compact which constitutes an American state, and unwittingly adopting the exploded European theory of the social compact, wherein the people are said to agree to pay taxes and supply "the government," or monarch, with purple, fine linen, and sumptuous fare, while it or he is to govern and protect the people.[1] And we have militarily educated and trained our Grants, McClellans, Shermans, Hancocks, Schofields, Blairs, and Sheridans, so as to have them ready to maintain by force this social compact, and show that "the army is the safety of the republic" thus formed. And these pseudo-republicans all contend that "the alle-

[1] These perverters say that Hume and others exploded this theory, and that, therefore, the idea of a social compact in America must be discarded, except as regards the compact, by which, they say, a nation was formed. They ignore the fact that society was already formed and complete (as, indeed, it had been for generations), when the federal system was adopted, and the so-called nation made; and that societies, each acting for itself, with its own mind and will, made that system, and endowed it with its only existence and force. Nay, more, they conceal the fact that Hume did not discuss the idea of the republican social compact, but expressly said, writing before the independence of our states: "My intention here is not to exclude the consent of the people from being one just foundation of government, where it has place. It is surely the best and most sacred of any. I only pretend that it has very seldom had place in any degree, and that, therefore, some other foundation of government must also be admitted." [Hume's Essays, No. xii.]

giance," both of citizens and states, is due to "the government," which hires and uniforms them, and is to be enforced by arms, if not voluntarily yielded. And "conservative" Liebers, Curtises, Johnsons, Jamesons, "Intelligencers," "Worlds," and such like, all over the country, stand ready to justify by argument these outrageous perversions of constitutional republicanism. Starting with the postulate of a social compact forming a nation, the argument of the perverters is easy, compendious, and practical. The "national constitution" is "the supreme law of the land." This gives "the government" "absolute supremacy." The duty to protect, which devolves on the government, is coupled with the right of control, and this extends to the effectual control of state sovereignty, as well as of all the civil and political rights of the people. And, though there are limits to the authority of the government, which are admitted, it is claimed that these are to be determined by itself. Said Daniel Webster: "It rightfully belongs to congress, and the courts of the united states, to settle the construction of this supreme law in doubtful cases;" that is to say, the government is (as Jefferson phrased the claim) "the exclusive and final judge as to the extent of the powers delegated to itself." And finally, "the government" has the inherent right to preserve its existence and its powers.

Here is exhibited the precise change Burke refers to, as the one whereby "all the popular magistracies in the world have been perverted from their purposes," namely, "the change from an immediate state of procuration and delegation, to a course of acting as from original power." We have, as had the Romans in the time of Augustus and his successors, imperialism "disguised by the forms of a commonwealth."

A Roman Chapter of American History. — A few extracts from the third chapter of Gibbon's "Decline and Fall" are apposite, instructive, and warning: "The tender respect of Augustus for a free constitution which he had destroyed, can only be explained by an attentive consideration of the character of that subtle tyrant. A cool head, an unfeeling heart, and a cowardly disposition prompted him, at the age of nineteen, to assume the mask of hypocrisy, which he never afterwards laid aside."

"When he framed the artful system of imperial authority, his moderation was inspired by his fears. He wished to deceive the people by an image of civil liberty, and the armies by an image of civil government." "The names and forms of the ancient administration were preserved by him with anxious care. The usual number of consuls, prætors, and tribunes were annually invested with their respective signs of office, and continued to discharge some of their least important functions." "Cæsar," continues Gibbon, "had provoked his fate by

ostentatiously taking the title of king, while he might have reigned as such under the title of consul or tribune. Augustus was sensible that mankind is governed by names; nor was he deceived in his expectation that the senate and people would submit to slavery, provided that they were respectfully assured that they enjoyed their ancient freedom." "To explain in a few words, the system of the imperial government, as it was instituted by Augustus, and maintained by those princes who understood their own interest and that of the people, it may be defined as an absolute monarchy disguised by the forms of a commonwealth. The masters of the Roman world environed their throne with darkness, and humbly professed themselves the accountable ministers of the senate, whose supreme decrees they dictated and obeyed. The face of the court corresponded with the forms of the administration. The emperors, if we except those tyrants whose capricious folly violated every law of nature and decency, disdained that pomp and ceremony which might offend their countrymen, but could add nothing to their real power. A feeble senate and enervated people cheerfully acquiesced in the pleasing illusion, as long as it was supported by the virtue, or even by the prudence, of the successors of Augustus. It was a motive of self-preservation, not a principle of liberty, that animated the conspirators against Caligula, Nero, and Domitian. They attacked the person of the tyrant, without aiming their blows at the authority of the emperor."

In the reign succeeding that of Augustus, "the assemblies of the people were forever abolished, and the emperors were delivered from a dangerous multitude, who, without restoring liberty, might have disturbed and perhaps endangered the established government." And some of the successors of Augustus, "scrupulously observed his constitutional fictions." As late as the age of the Antonines the Greek historians say, that "although the sovereign of Rome, in compliance with an obsolete prejudice, abstained from the name of king, he possessed the full measure of regal power." As imperialism became more fully established, the forms and shams were dispensed with. "The fine theory of a republic," says Gibbon, "insensibly vanished."

History has repeated itself; republicanism has perished in America, as it did in Rome. The form is left, but the soul is wanting. "Absolute supremacy" in "the government" and republican freedom cannot co-exist, for the reason that the latter is the absolute right of the people to govern themselves, and to make and unmake all governments at will. If the people would enjoy freedom again, they must retake sovereignty — "peaceably if they can, forcibly if they must."

"Who would be free
Themselves must strike the blow."

Philosophy teaches us specially, by the examples of Roman history. We find there the same perversions and usurpations, and the same destruction of liberty, in the name of liberty, that we have experienced. "Marius and Cæsar," says Gibbon, "subverted the constitution of their country, by declaring themselves the protectors of the people;" and Augustus pretended to be a servant of the people, while destroying their liberty, and making himself a dictator. He established "an absolute monarchy, disguised by the forms of a commonwealth." "His successors for a while observed his constitutional fictions," but the "republic insensibly vanished." Like ours, the representatives of the Roman people ignored their delegative capacity and acted "as from original power." Those perverters and usurpers, like ours, pleaded necessity; the welfare of the people; the public safety; the life of the nation, and the inherent right to preserve their own existence. With them, too, "the army was the safety of the republic"! This institution, composed of hirelings, as time advanced, became more and more recruited from foreign sources, and more and more depraved in materials. It acted long as an efficient instrument of tyranny, and finally set up the business for itself, and sold the empire at auction!

CHAPTER IV.

SECESSION AND COERCION.

IT is incontrovertible that the federal system is states united, and that these must always be sovereign, and superior to the governments they create. It is equally plain that the "national unity," the "absolute supremacy" of "the government," and the allegiance of the states thereto, which are asserted by the Massachusetts school, are absurd and pernicious, as well as traitorous falsehoods.

This "federal system" is precisely what Montesquieu and other publicists happily call a "republic of republics." Natural persons by *social* compact form the society called the state, which is a republic. Such state is a moral or political person, as contradistinguished from a natural one. For mutual protection, and general government, it joins other such political persons in *federal* compact, thus forming the "republic of republics," or "union of states," as the federal instrument characterizes the system formed by it. "Community of communities," "confederation of republics," "united states," etc., etc., are other phrases of public writers, signifying the same political system.

Natural persons, then, form states, while these, as political persons, form the federation called "the United States." The constitution contemplates these political bodies as solely the sources of power, and of elective right. Every voter acts for the state, and gets his special endowment of authority to vote from her alone. She settles the matter, as a sovereign, in her organic law. Hence we see that the representatives are elected by the states, as are the senators and the president; and that all of these, together with the officers they appoint, are "the government of the . . . states" under "the constitution of the . . . states."

Omitting from the above constitutional phrases the participial adjective, which, with the sense of *joined* or *associated*, qualifies or describes states, we easily distinguish between the political entities that form the federal system, and their mere qualities; and see that the only nation we have, or can have, is self-united or associated

states — the system being properly described as a "republic of republics," or a "union of states."

No Constitutional Coercion of States. — Our states being equal and voluntarily joined, the constitution being the expression of their will, and the federal government being their agency, in the very nature of things no coercive power over them could be derived from the constitution. Moreover, if they were once voluntary parties, they could not have become involuntary ones, without their own action; for they have the sole power of amendment [see Art. V.], and, to cap the climax, the fathers were unanimous in excluding the power of coercion from the federal compact, and, out of abundance of caution, guarding against it by amendment, all of which will be hereafter fully shown. Buchanan, Lincoln, and others argued that the recent exertion of federal force against certain states was not coercion of states, but was military coercion of persons, banded to oppose the federal laws, or, in other words, the putting down of a rebellion; but such views are dignified by calling them weak sophistry. For the said states acted as bodies in making the constitution; they moved as such in seceding; and they warred as such in resisting coercion. And, in each case, they respectively exercised that right of command over the citizens which results from the social compact, binding each to obey the collective will; and which is sovereignty itself. On the other hand, the federal functionaries were fighting to enforce an ordinance which the state had originally ordained, but had repealed, and made it treasonable to obey, namely, the ordinance of ratification, which, as to the said state and her citizens, gave to the said constitution, and the resultant government, their only possible validity and warrant.

The only Basis of Coercion. — To coerce a state is unconstitutional; but it is equally true that the precedent of coercing states is established, and that it is defensible under the law of nations. If this be correct, all will agree that such *ultima ratio* should be placed at once on its own ground, and its limits defined, so that our constitution may be vindicated and held sacred in the future, and the conscience of the people of the victorious states be relieved of the charge of violating the "supreme law of the land," in coercing the states that ordained it, and killing their people for defending them; for nothing can more demoralize, and finally demonize, the people, individually and collectively, than the consciousness of having committed such crimes, the determined enjoyment of the fruits thereof, and the constant making of false excuses to their consciences and to the world.

Where the constitution does not provide a treaty stipulation or

conventional rule, by which to settle a question arising among or between our states, the law of nations is to be resorted to, for the constitution only displaces such law *pro tanto*. This law would, if the federal compact were annulled, at once govern all questions among our states, just as it now does those arising among the states of Europe. The truth is, the purpose of the federal compact was the settlement of such international questions as it provides for and closes, such questions having been, as long as they were open and debatable, international ones. And it may be well to observe here, that the word "states," used in the constitution to designate the contracting powers that ratify and make it, is used in juxtaposition with, and has the identical meaning of, the word "states," that signifies the powers of Europe [see Art. III., § 2; Art. XI., amendments]; and it is absurd to suppose that Massachusetts, New York, or Virginia, in making a constitution of government, deprived herself of statehood or nationality, when she merely declared her *will*, which remained in her, and parted with no portion of her own being; and when her name, description and essentials, were, after associating, entirely unchanged. Neither the constitution nor history warrants the restricted meaning vulgarly given in our country to the word "states." Accurately speaking, it was nations or states that federated, and thereby formed our "community of communities," or "republic of republics."

In seceding, the Southern commonwealths exercised an indisputable right, though they acted with impolicy, and erred in ignoring the operation of international law. In higher politics — those of nations in their dealings with one another — acts become precedents, and make rules of law. So, in the case before us, the successful coercion of states made a precedent, and established a law. As secession affected the interest of the adhering states, questions arose for them to consider; and, treating the matter as one *in foro conscientiæ*, they could cogently reason that the case of a seceding state, to make her secession justifiable under the *jus gentium*, should contain the same ingredient that makes a homicide one of self-defence — the previous "retreat to the wall."

The Southern commonwealths were really fighting for constitutional liberty, which, under the circumstances, they thought seriously imperilled, and likely to be preserved by secession. Earl Russell's assertion was true, that "the South fought for independence, the North for empire." The wish of the former for constitutional liberty and independence was manifested by their adopting the federal constitution, with scarcely a change. Secession was justifiable if there was no other mode of self-preservation, or remedy for wrongs; for self-

preservation was the first law of nature to states as well as persons. But they had not properly come to this last resort, as we shall see, by noting the unpleaded pleas of the states that remained united — pleas under the *jus gentium*.

1st. These had the right to assume that Providence intended, as our fathers did, that all the territory between British America and Mexico should be under one political system, and they had a right (not under the constitution, which the state voluntarily made, and could voluntarily abandon, but) under the *jus gentium* to prevent or to cure disruption.

2d. They had the right to object to the establishment of a contiguous foreign state or federation, with its necessary rivalry, and antagonistic interests and policy, and the inevitable and ever-recurring international troubles.

3d. They could complain that, in spite of constitutional engagements, as well as in disregard of the respect due to the fathers, secession should be resorted to before exhausting all the remedies contemplated and provided for in the constitution, or arising out of the circumstances; especially as Congress, the Supreme Court, and a numerical majority of about 1,000,000 popular votes, were on the side of conservatism against a weak president, and could make the remedies efficient. This alone was justification enough under the *jus gentium* for the adhering states to coerce back the seceding ones.

And other pleas might have been made — as to the territory occupied by the new states, as to forts, armaments, public property, etc., as well as the federal debt. In all these cases, precision of pleading and absolute sufficiency, were unnecessary, for states are to judge for themselves, in the last resort, as to subjects of complaint and cases of war; and our states in their federal constitution, provided no mode of settlement or tribunal for such matters, so that the law of nations was the only resort for rules of action.

And here it is well to observe that while the seceding states acted with impolicy, and were wrong in the respects and to the degree mentioned, the coercing ones were gravely to blame for the original causes of the trouble — for constant and manifold aggressions and acts of injustice; and, finally, for their non-conciliatory and uncompromising spirit, and their disinclination to resort to diplomatic expedients under the law of nations to avoid so awful a recourse as war, which, if it can be avoided with honor and integrity, is a most heinous crime. And, moreover, a party demanding justice before any tribunal, must himself have sought to do justice.

Our System as thus Modified. — The precedent, then, may be

considered as established (not in the constitutional, but) in the international part of our law and politics, that all other means of getting justice, and preserving self-government and statehood, must be exhausted before secession is allowable. But it is as republics that states are to be held in, or coerced back to, the union; for the great end always in view is the preservation of constitutional liberty, as established in the states, under the guidance of the fathers; and this *necessitates* absolute self-government of the people as organized.

These, then, may be considered as the cardinal principles of our system, as it stands at present: 1. We have states self-associated for their self-protection and self-government. 2. Their status is that of sovereign political bodies, known to the law of nations, and described in the constitution as states. 3. Being republics or self-governing peoples, they must, according to the law of their nature, govern themselves, not in any qualified sense, but absolutely. 4. Their governments, state and federal, are agencies, and subordinate to them. 5. The federal agency has the joint authority of the states to govern their citizens within certain limits, and wield the coercive means entrusted to it; but there is but one rule of duty for it, *i. e.* the constitution, which each member of the agency is *sworn* strictly to observe, and which cannot be disregarded without *perjured usurpation*. 6. The states must remain in the union, till the last remedy the constitution affords against injustice, and loss of self-government and statehood, has been resorted to. 7. When constitutional means are exhausted, or show themselves to be vain, any means of self-preservation is justifiable to a state, for it is according to the first law of nature. 8. If secession be the remedy a state finally determines on, it affords the occasion for diplomacy or war, as among other nations.

Two Important Ideas. — 1. Suppose given states, then, to have gone through the forms of secession: the adhering ones, without denying either the fact or the right of secession, may, for the sake of the argument (*i. e.* the *ultima ratio*), concede that the former are out of the union, proceed to fight them as foreign states, amenable to the *jus gentium*, and enforce their return — controlling and using therefor, the federal agency and its forces; while, on the other hand, the coerced states cannot invoke, as against such coercion, the constitution they have abandoned.

2. Upon such basis, the coercion of states is not inconsistent with the federal compact. But the states victorious in the recent war, claimed that the acts of secession were null; and that they resorted to constitutional coercion. By these pleas they simply convicted themselves of warring upon states in the union, of violating the constitution, and of causing flagrant usurpation and perjury on the part

of their rulers. Nay, more, they have done the infinite mischief of making these high crimes precedents for the future; of justifying pleas of necessity for arbitrary acts — the very things constitutions were established to prevent; of introducing and vindicating unlimited discretion and regal prerogatives in the federal agency; and, finally, of showing the states that, if aggrieved, their only alternatives are *submission or war!* Such were not the ideas of the fathers!

As to the right of secession, it will hereafter be shown, by authorities that no one will venture to gainsay, that it is (not constitutional but) inherent and inalienable: that it is absolutely essential to, and *pro tanto* identical with, freedom; and that it was taken for granted, or expressly stated by the fathers, as indispensable to preserve statehood and liberty. It is, indeed, a right as absolute and indestructible as the state itself. Without it sovereignty cannot exist, and there can be no self-preservation of the original and only constituents of our "republic of republics." [1]

[1] Every American ought to read "Is Davis a Traitor?" by Professor Bledsoe. Most conclusively does it vindicate the right of secession; and it forms the best criticism ever written of the constitutional expositions of Story and Webster. With great deference, however, I object to his implication that secession is a constitutional right. So with the assumption of Mr. A. H. Stephens and others, in 1868, at the White Sulphur Springs, that the right of secession can be abandoned. Self-preservation is the first law of nature — most especially to commonwealths; and God designs a state to secede, if her "defence" and "welfare," which He has charged her with preserving and promoting, require it.

CHAPTER V.

REBELLION OR NOT?

ASSUMING it to be a principle or rule established by the war, that if one of our sovereign states secedes from the union without first exhausting all the means of justice the constitution affords, she is to be forced back into the union, to govern herself therein; let us look introductorily, at another intensely interesting and vital question, which recent events have forced upon the American people, and which the perverters have made every possible effort to dodge, and prevent investigation and decision upon.

Were the Confederates Rebels and Traitors? — It is anxiously asked by all thoughtful and conscientious men, who seek for constitutional truth and know its value: What law, divine, international or civil, consigned Davis, Lee, and the other confederates to death (for all alike are guilty or not guilty), when states, as political bodies, or vehicles, carried them — without their volition — from the union, and constrained them to obedience and military service; and when this obedience ran on all fours with the noblest impulses of the human heart, and with the first, best, and most imperative law of nature — self preservation? for every member or citizen of such state, who obeyed her, was defending his home, his family and kindred, his friends, his neighbors and fellow-citizens, and the commonwealth which involved and protected them all — in short, everything for which a man wishes to live. In truth, vindicating the action of Davis and Lee is vindicating American institutional liberty, or the right of the American commonwealths to exist, and to exercise free will in self-government, whenever and however they please.

A state is the citizens thereof. She is a complete political body, formed, as Massachusetts, in her organic law, declares, by "a social compact, in which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." Collectively, therefore, the citizens govern, while individually they obey, each citizen having two capacities — the one as a voter or governor, and the other as a subject. It

is obvious, then, that each citizen must obey the body, she having, by immediate grant in the social compact, actual possession of him, and full power to coerce and punish him. So that while, on the one hand, the citizens must absolutely obey all her political determinations, on the other, it must be right, and not treasonable, for them to disobey any counter authority. She must be solely and always the supreme power.

This commonwealth of citizens, in her organic law, endows fit members with suffrage, thus, by virtue of original, absolute and inherent right, ordaining the actual and efficient governing power, which is a delegative trust. Thus we see that the commonwealth is the real government, while the body of electors is its original agency of government, by and through which, existence and authority are given to all constitutions, so-called governments, and officials, state or federal. This exhibits our representative republicanism, or self-government.

The citizen votes for the safety and welfare of the state, under her authority; and, when votes fail, he fights for the same object, under the same authority, against all foes, whether external or internal. Voting and fighting are correlatives, and both are done in obedience to the instinct of self-preservation — the first law of nature — the same instinct that prompted men to form the societies called states, and these to form the federation called "the United States." The only possible original and ultimate judgment and will to decide when the occasion for fighting or voting arises, and to direct the mode and means, are those of the state. And as the federal agents are not only citizens and subjects of the state, but are chosen for her, by her electors, to do her will, it is obviously in the nature of rebellion and treason, for them to oppose her will by force. If they do so, her voters must become her soldiers, to fight such perfidious agents; and defending her is defending themselves, and vindicating their own collective will, as well as preserving republican liberty, or the right of the people to organize themselves, and govern themselves. The Southern patriots acted in conformity with these principles, and hence were not rebels and traitors.

The Federal Compact vindicates them. — In a striking manner does the federal compact support these views, for it shows that the only parties to, and the only actors under it, are the states; and that these are the only sources of elective power — all the officials being citizens of states, elected or appointed by and for them. Indeed, these officials belong to states as much as ever slaves did to their owners; and their power or discretion is only that of their masters, and is strictly confined to the delegations in the compact. And the said compact acknowledges and declares that every citizen is a citizen of

a state, or, in other words, that he is "bone of her bone and flesh of her flesh;" owes allegiance to her alone; and is compellable to obey the federal agency solely by virtue of her command. Article IV., § 2, shows all citizens to be citizens of states; and Article II., § 1, shows that the President must be chosen by the states, while the delegations of states that compose Congress are elected and empowered solely by them. So that, *in collegio*, these officials, and the citizens and subjects of the states which they appoint to federal offices, constitute "the government of [*i. e.* belonging to] the United States," or, in other words, the agency of self-government of the states which are united. The simple phrases of the constitution, "the united states," and "the states in this union," should end controversy, as the states were pre-existent, and *associated themselves* to form the union. It is obvious, then, that the ultimate authority for the citizens to obey is *the state*, and not *the government*.

The treason-clause itself supports this view. It declares that "treason against The United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." The objects of this treason, then, are (not "the government," "the nation," or "the people," but) the states, or, to use Madison's phrase, "the people as composing thirteen sovereignties," each of these sovereignties having its own subjects, which owe allegiance to it, and are liable to the penalties of treason for violating that allegiance. And "the government" itself, created as it is by, and subject to, the supreme law of the said states, may, by such "levying war against *them*," commit treason against "*them*." Nay, more, it might with "*their*" army and navy become "*their* enemies," and subjugate "*them*" one after another to its central despotism, as it has already done to ten of "*them*," and as it may, on new pretexts, do to the rest. For a citizen to fight against his state is treason, while his fighting against "the government," by command of his state, is patriotic duty!

Strong Corroborations. — The guilty perverters, and those who are to profit by centralization, hate these truths; but it will be seen that the constitution, the records of the country, and the contemporaneous exposition of the fathers, are univocal in support of them. It is well here to give a slight foretaste. Madison wrote in Article 46 of the Federalist: "The federal and state governments are, in fact, but different agents and trustees of the people. . . . The ultimate authority, wherever the derivative may be found, resides in the people alone." In the Virginia Convention he explained that "the people" meant "the people, as composing thirteen sovereignties." In Article 40 of the Federalist he said: "The states are regarded as distinct and independent sovereignties . . . by the constitution

proposed." Nay, more, every idea herein expressed is to be found in the federal history, and the present constitutions, of New York and Massachusetts, as will hereafter be fully shown. These constitutions describe the citizen as a "member" and "citizen" of the state — the latter calling him a "subject of this state;" and they declare sovereignty," *eo nomine*, to be in the states respectively, and no "powers" to be out of them except *entrusted ones;* and their history is full of proofs that the federal government has no shadow of right to exist and hold jurisdiction within their borders, except by and *under* their sovereign will.

As the confederates acted in precise accordance with these principles, it is absurd to call them rebels or traitors. They, as individuals, obeyed themselves as states. This is self-government. It is republican freedom. Our states, then, which were the first dwelling-places of Liberty, are her last retreats, her final citadels, in her contests with power!

Coercion of States is War against them. — By all the fathers, as will be hereafter shown, coercion of states by the government, was considered to be war. Those waging this, no matter what they are called, must be "enemies;" and if the citizens and subjects of the states attacked, wage this war, or give "aid and comfort" to others who do so, they commit treason. Not only was no provision made for the federal authorities to coerce the states (their only coercive authority affecting citizens, and being enforced by courts), but when the thoughtless proposition was made, in the federal convention, to give the general government this coercive power, it was unanimously rejected, Madison and Hamilton stigmatizing it as "visionary and fallacious," and "the maddest project ever devised." They also declared that it was war, and was entirely incompatible with the plan of union, which was a voluntary association of states, the sole purpose of which was "the security of the rights and the advancement of the interests" of the associates. If the people, as states, possess original and absolute power, while the federal government has purely derivative, and necessarily subordinate authority, coercion of states by the said government is not only unconstitutional, but, as the fathers declared, it is war against them, and is, in its very nature, treasonable. And the citizens "levying" the "war," or giving aid and comfort to the enemy, — if they are citizens of the state which is the object of the "war," — directly violate their allegiance, and commit treason.

The Nation is States — Governments are Creatures. — There is no doubt that all the architects of American constitutional liberty, and all the master workmen who built the temple, all the presidents who left any record down to 1860, with, perhaps a single exception,

and all the respectable statesmen, except a few who are more partisans and advocates than statesmen, regarded the union as a federation of self-governing sovereignties.

These sovereignties ratified the constitutional compact separately, just as European sovereignties would ratify a treaty. They thereby created the federal government, and "delegated" to it the only power it ever held, or could hold.

All ideas of state subordination are alike false, mischievous, and absurd. If thirteen sovereignties of Europe, in order to join their strength in defence, to lessen the trouble and cost of government, and to lighten the people's taxes and other burdens, were to unite themselves, no one would contend that the common agency — that is, the congress of commissioners and ambassadors charged with the duties of such general government — could by any possibility become sovereign over the said sovereigns. Equally false and absurd it is to say that the government of our country can have sovereign or controlling authority over the states that created it. Governmental sovereignty in a republic is a solecism. That cannot be sovereign which is subject to control and abolition. The government provided for in, is necessarily under and controlled by, the constitution. And this instrument is necessarily subject to the commonwealths of people that made and ordained it as their law. It follows, of course, that the states are sovereign, and the government is their subject. This relation having been once established, only treasonable revolution can change it.

The United States taught Davis and Lee Secession. — Andrew Johnson, Salmon P. Chase, Jefferson Davis, and Robert Lee were young men acquiring their political knowledge about the same time. They were taught that the states were (to use Hamilton's phrase) the "essential component parts" of the federal system; or, in other words, that there was no nation, but states; that they, as their parents had been, were citizens of states, and owed allegiance thereto; and that they were entirely subject to the will and coercive authority of their respective states. Moreover, they knew from history that the federal convention, at the instance of Madison and Hamilton, excluded the power to coerce states from the federal compact, as an absurdity. And furthermore, the federal system had been in operation for about forty years, and yet state sovereignty, and the included and essential right of secession, were taken for granted. The only books in which they could study constitutional law laid down these doctrines as unquestionable. Said St. George Tucker, in his Commentaries, 1802: "Each is still a perfect state, still sovereign, still independent, and still capable, should the occasion require, to resume the exercise

of its functions as such, in the most unlimited extent." Said WILLIAM RAWLE, in his Commentaries, 1829: "The states, then, may wholly withdraw from the union; but while they continue, they must retain the character of representative republics. The secession of a state from the union depends on the will of the people of such state. The people alone, as we have already seen, hold the power to alter their constitution." The above authors — one from the North and the other from the South — were among the ablest of the early American jurists, and their statement was taken as truth. It was an essential and indisputable truth, and not a mere opinion. And it will be shown fully hereafter that this right of secession was considered by the fathers unquestionable — too much so, indeed, for discussion. The above works were text-books at West Point when Davis and Lee were cadets there. Was it not rather inconsistent for Uncle Samuel to think of hanging his pupils for practising the precepts he specially taught them?[1]

Thus it was that these four distinguished personages were educated and impressed; and it is probable that the views of all of them remained unchanged during thirty years of their manhood till 1860 — the great epoch of change. Before that they would have deemed it a monstrous idea that the federal government could lawfully hang them because the state irresistibly carried them out of the union, and compelled them to defend her, while, at the same time, the state could have hung them if they had opposed her; and they could but believe that when the state repealed its ordinance of "ratification," it was no longer lawful for the citizens to obey the federal authorities, as ratification was the only cause of federal jurisdiction, and as the power of repeal was, by all law and common sense, exactly commensurate with that of enactment. Would it not have sounded like a horrible romance for two of these men, after passing to the evening of life, in ardent devotion to these principles, to have had the power, and to have exercised it, of hanging the other two — also become old, and among the most distinguished men in the world — for honorable consistency to these same principles, and for obeying and defending their states, where were concentrated all the objects of a true heart's devotion — those objects which noble and brave souls are wont to prefer to all the rest of earth, and to defend even to the last drop of blood — neighbors, friends, kindred, birthplace, hearthstones and altars, and the "green graves of their sires"?

[1] They probably were at West Point in the administration of John Quincy Adams, who, as late as 1839, essayed to teach the whole American people that "the people of each state . . . have a right to secede from the confederated union." These are his very words!

CHAPTER VI.

REBELLION OR NOT? (CONTINUED.)

PATRIOTISM IS LOVE OF ONE'S STATE.

THE commonwealth, the cherishing mother, was belligerently attacked for exercising the same political will in withdrawing from, that she had done in adopting, the constitution, — attacked, too, by the subjects of herself and her sister sovereigns, who were temporarily entrusted with federal power, and who had perverted the government from its uses to do so. Then went forth her summons to all her sons to defend her with arms. "Breathes there a man with soul so dead" that he will not, in such a crisis, stand by and defend his family, neighbors, fellow-citizens, and his state, against all or any part of the outside world? He who is not for his state is against her, and in such an emergency he must obey her call, unless, like a recreant, he fly abroad, or, like a traitor, go outside, and turn the weapons of war against her breast, against his own kindred, against even the mother that bore him! As for me, if there must be conflict, I would rather sink with the commonwealth containing these dearest treasures of earth, than swim with the concentrated excellence of a thousand unions! Let me, for them, rather be broken on the wheel, than live for one moment with the infamy of deserting them in the hour of their need. I merely mention, but do not dishonor myself by contending for, so sacred a sentiment. Of every good man and true statesman, it is the very soul of his heart! On questions of patriotism and honor, "reasoning is sometimes useless, and worse. It is too cold, and its processes are too slow. I feel the decision in my pulse. If it throws no light on the brain, it kindles a fire at the heart!" [Fisher Ames on the Jay Treaty, 1796.]

The Patriotism the Fathers felt and taught. — The states, as sovereign political bodies, existed before the constitution did. Each was made up of its members or citizens, these being bound in the social compact, as individuals, to obey the law of all. To protect themselves and preserve their blessings, was the object of the people in forming such state. Necessarily all the heart's treasures are there, and these

are the "blessings of liberty," of which the federal preamble speaks. It was solely to increase the security of the same people and their "blessings" that the federal system was formed. The state, then, is the sole object of patriotic devotion, — of the heart's *allegiance*, while the general government is simply entitled to *obedience*, because the state commands it. And honor here concurs with patriotism; for, while the latter is devotion to one's country, and to the society that involves his membership and all his blessings, the former prompts him to comply with the social compact, and obey that society's commands, and to defend her. Moreover, self-protection and duty to neighbors and fellow-citizens are accomplished by such obedience and defence.

On this sacred subject listen to the voice of the fathers. Samuel Adams, of Massachusetts, called "the sovereign authority of the state," "the palladium of the private and personal rights of the citizens." [III. Life of Samuel Adams, 273.] John Dickinson, of Delaware, spoke of "the independent sovereignty of the respective states" as "that justly darling object of American affections," to which the federal agents are responsible. [II. Political Writings of Dickinson, 99.] Oliver Ellsworth, of Connecticut, looked "for the preservation of his rights to the state governments." "His happiness depended on their existence, as much as did a new-born infant on its mother for nourishment." [I. Ell. Deb. 474, v. Ibid. 268.] Said Alexander Hamilton, of New York, who considered "the states" to be the "essential component parts of the new system:" "We love our families more than our neighbors; we love our neighbors more than our countrymen in general. The human affections, like the solar heat, lose their intensity as they depart from the centre, and become languid in proportion to the expansion of the circle on which they act. On these principles, the attachment of the individual will be first and forever secured by the state governments." [II. Ell. Deb. 354.] Many kindred expressions of the fathers might be here given, but, I presume, these will suffice. Not an opposing line can be found in all our history.

The letter containing the sentiment of Dickinson, met the express and emphatic approval of the great and good Washington. Indeed, none dissented in those earlier and better days. All felt the holy flame. But since then politicians, perverters of constitutions, corrupters of public sentiment, and violators alike of sacred faith and sound principle have compelled the patriots and statesmen of the country to retire, and have, for selfish and partisan purposes, introduced a sort of idolatry, — a false worship, the poor pagans of which, in their fanaticism or moral obliquity, ignore the dear objects and institutions of home, and — like the pilgrims to Mecca or Lassa — wander off, and bow the knee, and submit the neck to their idol, which,

in this case, is a mere political arrangement, — an agency or commission, that is only entitled to regard and devotion just so far as it affords the designed safety to the aforesaid commonwealth and its associates, and all the rights which they involve, and gives to citizens a sense of present justice, and a satisfactory prospect for their future safety and happiness.

Davis and Lee no Traitors. — Such was the teaching of the fathers as to patriotism and its object, and thus thought and acted Davis, Lee, and every other patriot who defended his state against federal attack. Each one knew of the old ordinance or law of his state, "ratifying" her federal compact, and commanding him to obey her federal government, and he had long obeyed it; but a later act repealed the former, and commanded him not to obey the said government; and he knew the power to repeal to be precisely commensurate with that to enact. Why should the citizen heed and obey the state's command, contained in her ordinance of ratification, and disobey her countermand? And how could there be rebellion and treason in obeying the authority which had habitually commanded him, and which he had habitually obeyed, — the authority of the self-governing body he belonged to?

Again, it was not alleged that Davis, Lee, or any other confederate chief, induced the states to secede, or that any of them seceded individually, and of their own motion, or, indeed, that they acted in the premises at all before secession had become *un fait accompli*, and hostilities had been commenced. Hence, the *will*, the *act*, and the criminal *intent*, which must concur to make up the crime, could not be proved against them.

Moreover, the only semblance of individual responsibility for these things, must have been in the members of the convention, by virtue of whose act all citizens (including Davis and Lee) were alienated from the union, made belligerent, and forced as well as commissioned, to fight the federal government. No one hinted at prosecuting them.

Absurd Views of Sovereignty. — These conventions, endowed with plenary authority by the states, were unlimited in their power; had actual control of all citizens; made it treason to oppose secession; and were able, ready, and willing to hang too troublesome opponents. Delightful country to live in, where *one authority* can hang you for doing what *another authority* can hang you for not doing!

Such constitutional law is that of Bedlamites, and to enforce it would soon depopulate the country. Yet, it is a legitimate sequence of the doctrines of the Massachusetts school, which have produced all

our confused notions and loose talk about "delegated sovereignty;" "divided sovereignty;" "two sovereignties;" "federal sovereignty and state sovereignty, each supreme in its own sphere;" "the sovereign powers distributed between the state and the general governments;" "the absolute supremacy of the government," etc., etc. Never has there been, in the land now called "the United States of America," a sovereign government, or a sovereign power in government, since the British *monarchy* was displaced, in each and every colony, by a *republic;* for ever since that, the sovereignty has necessarily been in the people; and it is now the fundamental principle, that the absolute right is inherent in the people, of instituting, altering, or abolishing government at will. There can be no republic, unless the people continue to have sovereignty, or the right of self-government. And as sovereignty is only predicable of organization, and as the people were never organized except in states, it is certain that the sovereignty of our country must ever have dwelt in the said bodies of people, — each for herself being sovereign; and that the federal and state governments are both, as Madison declared, the agencies of this sovereignty, and necessarily subordinate to it. "The *sovereignty of government*," says Daniel Webster, "is an idea belonging to the other side of the Atlantic. *No such thing is known in North America.*" [Speech of 1833.]

States alone were Responsible for Secession and War. — How absurd it is to hold individual citizens responsible for secession, they having no more volition or power to stop the state than the Man in the Moon has to stop that orb! In Virginia, for instance, 150,000 voters, including General Lee, sent delegates to a convention, which duly deliberated, and ultimately voted the state out of the union. As a citizen, he was compelled to obey, and finally defend the state. Opposition, after the convention had acted, would have been punishable enmity to his commonwealth, she having possession of him and his family and estate, and the fullest possible power of punishment. It must strike every one, then, that states having seceded as bodies, and *ipso facto* carried all the citizens out of the union, Davis, Lee, and others, cannot be held responsible as individuals for *secession*, or for the *war* which the said states waged against the federal government. Regardless of the condition, position, wishes, or acts of any citizen, the state took the deliberate and solemn step of seceding from the union, and the further step of federating with other states, which had seceded for the same causes and about the same time. The important act of secession was done in precisely the form, and with the solemnities observed by the original states, in their corporate act of "assenting to" and "ratifying" the instrument of union called the federal

constitution, — that is to say, a convention of each state, elected and empowered by the sovereign people thereof, after due deliberation, declared the will of that political entity or "moral person" called "the state" to be — withdrawal of the consent and the "delegated" authority of said state from the federal constitution. This is secession. Now, this commonwealth, which had actual possession of and jurisdiction over her members, and which no citizen could escape from without running away from home, estate, family, and everything dear, and becoming an outlaw or an emigrant, — this great repository of everything that mortal heart-strings entwine themselves around, having, of its own motion, withdrawn from the federation, Davis, Lee, or any other given citizen, was deported, as it were, from the union, having as little practical volition in the matter as an infant of emigrating parents. Nay, more, the state, with her hand actually upon him, exacted his submission and obedience under penalties which could have been enforced. And every one knows that such penalties did exist, and were enforced, and that malcontents were persecuted and driven out of their respective states. Whether a *state*, acting thus, did right or wrong, is not now the question; *citizens* had no choice. And, furthermore, as to Mr. Davis, he did not vote for secession, and did not even favor the policy, though he had no doubt as to the right.[1] If General Lee voted at all, he voted against secession.

And States alone were Punishable. — He is dull that does not perceive, and uncandid that does not acknowledge, that, as it was the people as a commonwealth that seceded, and committed the acts of hostility complained of, the said political body was the proper subject

[1] Hon. O. R. Singleton, who was for many years an influential member of the Federal Congress from Mississippi, and who was subsequently in the Confederate Congress, wrote to the author substantially as follows: "Near the close of 1860, a short time before South Carolina seceded, a conference of our delegation in Congress was held in Jackson, Miss., at the instance of Governor Pettus. The main question propounded for discussion was, whether, in case South Carolina seceded, Mississippi should do likewise, or wait and endeavor to secure the co-operation of the Southern States. Senator Jefferson Davis declared emphatically against separate state action, arguing that secession was an unquestionable right belonging to every state, but that it was not to be resorted to, until every other peaceful means of securing redress had been exhausted. He gave cogent reasons why Mississippi should not secede at that time, and expressed the hope that by some means the necessity of her seceding at all might be averted. His views were such that I, with others, thought him altogether behind the people. In conclusion, he said his allegiance was due to his state, and that her choice, as well as her fate, should be his."

A private letter from Mr. Davis himself to the author contains the following: "A dissolution of the Union was with me always the last resort," "a very great, though not the greatest, of evils." He considered that a state had necessarily an unlimited right of self-preservation, and could but be the final judge of the means; and that the right of secession was one of the absolute rights involved in the nature of sovereignty, — a right inherent, essential, and inalienable.

of punishment, if this was due; and that such body must be reached by the *ultima ratio*, or not at all; for, as was said by Burke, "you cannot frame a bill of indictment against a people." The *will, intention*, and *act*, the ingredients of the offence charged, having been solely those of the state, it is common sense, and requires no argument, that the state alone is punishable. That the states fought, as such, against coercion, is a fact which the federal agency could no more prevent or undo, than it could change the principles of law applicable to such facts. And those judges — some of them "pigmies perched on Alps" — whose wishes upon these subjects father their thoughts, simply achieve falsehood, and attract derision by attempting to decree the non-existence of facts which even Deity could not destroy. It is simple and palpable untruth to say that there was no secession *de facto*, — no state fighting *de facto* against the federal agency, — no confederate government *de facto*. They might as well say there was no war *de facto*.

The Atonement was Complete. — And, supposing the states to have been guilty, were they not punished enough? Multitudes of their children were slain, and their whole people long mourned in bitter anguish. They were reduced to unmitigated ruin and wretchedness. And, worse than all, they lost completely their freedom of will, and were degraded and humiliated as were never states before. Russian serfs had more liberty and protection. And, monstrous as it may seem, "the iron entered the soul" of these stricken and sorrowing commonwealths insufficiently to sate the devilishness of some of their native sons; for these have ever since traitorously striven with enemies to subjugate the said republics, and put their proud hearts permanently under the iron rule of ignorance and brutality!

The Jus Gentium protected Confederates. — The belligerent character of the Southern States, recognized as it was by foreign nations, and by the federal government, was, under the *jus gentium*, an ample shield to their citizens, no matter whether the recent conflict was a "civil war" or a "war between the states." Says VATTEL [pp. 425-7]: "A civil war breaks the bonds of society and government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. . . . They stand, therefore, in precisely the same predicament as two nations who engage in a contest, and, being unable to come to an agreement, have recourse to arms." . . . "The obligation to observe the common laws of war toward each other is, therefore, absolute, — indispensably binding on both parties." And as to Davis, Lee, and the officers and soldiers of such belligerent, their status of prisoners of war precluded all questions of *civil* punishment. Indeed, by hesitating on such a subject,

the federal agents courted the world's contempt. And those who persisted in prosecuting Davis, either knew not the law of the case, or knowingly conspired to effect an unlawful purpose, — evincing that "malice prepense" which makes homicide murder.

The Legitimate Conclusions. — It is obvious, then, that the confederates observed the obligation of the social compact, — the highest of all political obligations in a republic, — and were true to their allegiance, and to the requirements of patriotism, as well as to the instinct of self-preservation; and that, *if* in the history of the last decade of years, any *rebels and traitors* appear, they are those who, being citizens and subjects of states, used federal force in "levying war against them," or adhered to their enemies, "giving them aid and comfort." Those who wage war against states must be "*their enemies;*" and the citizens of states, who assist such enemies, must be TRAITORS!

CHAPTER VII.

THE ARCHITECTS' IDEA OF THE EDIFICE.

WAS our federal system several distinct and sovereign political bodies, self-united, and consequently superior to the voluntary bonds; or were these pre-existent bodies reduced from states to provinces, and consolidated into one commonwealth or nation? This is a simple inquiry of fact, as free from intrinsic difficulty as is such question concerning thirteen complete buildings, which the thirteen separate proprietors have united under a single all-sheltering roof, and provided with common corridors, walks, kitchen, back-yard, stable, pig-pen, hen-roost, and garden; or concerning thirteen pre-existent colleges, self-united in a university; or concerning thirteen neighboring proprietors who establish a common agency for their common concerns; or concerning thirteen associated commonwealths, whose "U. S." means either "united sisters" or "united states." In all such cases, the individuals are facts or entities, unchanged by association, and the thing formed by such association is technically named and described in legal and political terminology.

Now, if Inigo Jones, Sir Christopher Wren, Brunel, Michael Angelo, or Cheops had contemporaneously spoken or written of the structure he was building, that it was a palace, a church, a pyramid, or a tunnel, it would be laughable, if some one — whether architect or not — were to say, in after years, "No, it is a wharf," "an obelisk," "a bridge," or "a steamship;" and if the latter were to argue on it, he would be derided, especially as the matter is one of fact, and not of interpretation, — of technical description, and not of argument. The object of this chapter is to present the positive and unambiguous statements of the great architects of the federal edifice, in direct contrast with the utterances of Dane, Story, and Webster, and their perverting followers.

The Perversion to be Exposed. — In Chapter II., I showed, by quotations, that the fathers considered sovereignty to remain in the people, and the so-called governments to be mere agencies with delegated powers. Of course this proved the falsity of the assumed "ab-

solute supremacy" of "the government" over the states and their people. This chapter will prove the following cognate assertions to be not merely mistaken opinions, but entire, though perhaps unintentional, untruths. They are to be found in Daniel Webster's great speech of 1833. He asserted that "contemporary history," the Federalist, "the debates in the conventions of states," and "the writings of friends and foes," all agreed that "*a change had been made,* from a confederacy of states, *to a different system;*" that the constitution was made by "the people of the united states in the aggregate;" that therein they, the said people or nation, "distributed their powers between their general governments and their several state governments;" that this was their "supreme law," and that by it "state sovereignty was effectually controlled;" or, as the Philadelphia Convention more recently but as correctly worded it, — "the government" has "absolute supremacy," and the states are bound "in allegiance" thereto! It is plain that these are assertions of fact. They are either true or false. I shall prove them herein to be entirely and absurdly untrue.

The Inquiry is one of Fact. — We are necessarily dealing with facts, or inferences therefrom, when we attempt to ascertain from the constitution and history, what the constitution and government under it are. When the states (or the people) acted, what, in point of fact, did they make? Was it a federation of states, or was it a single state, divided into counties or provinces? I shall duly prove herein the following facts: 1st. That the states existed, as separate and independent sovereign states, before the federal constitution. 2d. That they, as commonwealths, alone acted in establishing that constitution and the government under it. 3d. That the entire existence and powers of the said government are from and under them. 4th. That each and every federal functionary is a citizen and subject of a state, elected by, and acting for, such state. 5th. That our "united states," or "union of states," — as these phrases indicate, — is a federation of sovereignties. Now, these are facts or falsehoods. I shall prove them to be facts beyond controversy, and show that the federal constitution, the history of its formation, and all the acts and records of the states concur in proving them. This chapter is devoted to showing that the fathers unqualifiedly asserted the union to be *a federation of sovereign states;* and that they considered the federal government to be alike the creation, the agency, and the subject of the states. The italics, etc., will be mainly the author's.

Testimony of the Writers of the Federalist. — The statements of Hamilton, Madison, Jay, Washington, and Franklin are of more weight than all other authorities, on questions involving the origin

and nature of the constitution; and they fully and precisely support all the above assertions of fact. The three first mentioned are the great triumvirate, who wrote the series of papers in 1788, afterwards collected in a volume, and called the Federalist. This is universally considered to be the most authoritative of all commentaries on the federal constitution, as it was written by the very ablest of the framers, at the time that the states were in process of deciding upon it, and as it powerfully aided in overcoming the charges against, and the apprehensions concerning, the proposed system. I wish it particularly noted that all the extracts contradict Messrs. Dane, Story, and Webster — whose dogmas are above stated in the language of the last — in the most positive manner; and they decisively refute the numerous Curtises, Mansfields, Jamesons, Parkers, Brownsons, Greeleys, Raymonds, and other "professors of constitutional law," politicians, so-called statesmen, and newspaper editors, who nowadays habitually reiterate the assertions of the aforesaid great men, and voluminously sophisticate to support the same.

Said ALEXANDER HAMILTON, in articles 9 and 85 of the Federalist: "If the new plan be adopted, the union will still be, in fact and in theory, an *association of states or a* CONFEDERACY." "Every constitution for the united states must inevitably consist of a great variety of particulars, in which *thirteen independent states* are to be accommodated in their interests, or opinions of interest. . . . Hence the necessity of making such a system as will satisfy all the *parties to the compact.*" He also said the states are "*essential component parts* of the union." [II. Ell. Deb. 304.] In an address dated February 18, 1789, to the people of New York, he said: "*The people* of this state are *the* SOVEREIGNS of it." The whole federal history, and the present constitution of New York, precisely quadrate with these principles.

JAMES MADISON, in Articles 39 and 40 of the Federalist, said: "*Each state*, in ratifying the constitution, is considered as *a* SOVEREIGN *body*, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new constitution will be a federal, and not a national, constitution." "The *states* are regarded as *distinct and independent* SOVEREIGNS . . . by the constitution proposed." His speeches in the Virginia convention set forth the same views. [See III. Ell. Deb. 381, especially.]

JOHN JAY argued in favor of *the states* "continuing united under one federal government, vested with sufficient powers for all general and national purposes;" and opposed the idea of "forming three or four confederacies instead of one." He further said: "Some time must yet elapse before all the states will have decided on the present plan." This he characterized as a "*union of states.*" I quote partly

from the Federalist, and partly from his "Address to the people of New York." [I. Ell. Deb. 496.] In the last he described the general government as the *agents and overseers for the people*, by whom they are to be appointed."

So we find Mr. Webster's citation of the Federalist to be without warrant, and his assertions to be decisively contradicted by that great authority.

The Statements of Washington and Franklin. — General Washington has left on record numerous evidences that he precisely agreed with the statesmen heretofore quoted, as well as with Wilson and Dickinson, to be quoted presently. He always assented to the idea that a confederacy of sovereign states was being formed. And the proof is direct, positive and abundant, that he recognized the states as sovereign parties to, and sovereign actors under, the new system. In a letter to Lafayette, dated June 17, 1788, he said: "I mentioned the accession of Maryland to the proposed government. . . . The accession of one state more will complete the number (nine) needed to establish it."

To General Pinckney, June 28, 1788, he writes of the Virginia convention having adopted the constitution by 89 to 79; of the people of Alexandria rejoicing; of their enjoyment being heightened by the news that "New Hampshire had, on the 21st instant, acceded to *the new* CONFEDERACY by a majority of eleven voices;" and of "pouring a libation to the prosperity of the ten states that had actually adopted" the constitution.

To Governor Johnston, of North Carolina, June 19, 1789, he writes of "the political relation which is to subsist hereafter between *the state* of North Carolina and *the states now in union*."

To Madison, Aug. 3, 1788, he writes of the time when "*the states* begin to act under the new form;" and to General Lincoln, Oct. 26, 1788, that whoever shall be found to "enjoy the confidence of *the states* so far as to be elected Vice-President" will be acceptable to him should he be President.

It is well also to note here his endorsement of the expressions of James Wilson and John Dickinson, given below.

These and numerous other expressions, not incompatible with his wish for a strong and efficient federal government, and a lasting union, settle beyond doubt Washington's view that the states acceded to the federal system as parties to a compact, and were to act as sovereigns "under the new form." It will be shown in a subsequent chapter, by abundance of proof, that state sovereignty in the union was an essential part of Washington's political creed.

Dr. Franklin considered the constitution to be a compact between

sovereign states; and he proposed, in the convention of 1787, the second branch of the federal congress, wherein "each state should have equal suffrage," to secure "*the* SOVEREIGNTIES *of the individual states*" and "their authority over their own citizens." [V. Ell. Deb. 266.]

The Testimony of the Five next in Rank. — John Dickinson, Gouverneur Morris, James Wilson, Tench Coxe, and Samuel Adams, may be regarded as the five next in rank — if not equal — to those quoted, in efficiency and influence, and fully their peers in patriotism, ability, and zeal, in striving for "a more perfect union," and "a more efficient government."

JOHN DICKINSON, who was at one time president of Delaware, and at another of Pennsylvania, was a leading statesman and political writer of that period, and a most influential member of the federal convention. In one of his remarkable letters, he characterizes the new political system as "a confederacy of republics," "in which *the* SOVEREIGNTY *of each state* is represented with equal suffrage in one legislative body, the people of each state . . . in another, and the sovereignties and people . . . conjointly represented in a president." [II. Writings of Dickinson, 107.]

The views of Dickinson were those of Washington, as appears from a letter of the latter to John Vaughan, dated April 27, 1788.

GOUVERNEUR MORRIS, afterward minister to France, and United States senator from New York, the accomplished statesman to whom, in the federal convention, in which he was a delegate from Pennsylvania, was entrusted the rewriting of the constitution, who, having changed these words, "We, the people of the states," etc., as adopted by the convention, to "We, the people of the united states," must be supposed to know their meaning, declared, years afterward, that "the constitution was a compact, not between individuals, but between political societies, ... *each enjoying* SOVEREIGN *power*, and, of course, equal rights." [III. Life of G. Morris, p. 193.]

JAMES WILSON, of Pennsylvania, a member of both the federal and state conventions, a strenuous advocate for a strong government, and afterward one of the ablest of the federal supreme judges, called the general government "a federal body of our own creation," using "our" to designate the people of Pennsylvania, whom he was addressing, and whose ratification he was advocating; he stated the object of the convention of 1787, to be to induce the states "to *confederate anew* on better principles" [V. Ell. Deb. 158]; and he said, in an address early in October, 1787, which was published generally in the papers of that day, "Let it be remembered that the business of the federal convention was not local, but general; not limited to the views

and establishments of a single state, but coextensive with the continent, and comprehending the views and establishments of *thirteen independent* SOVEREIGNTIES." [II. Am. Museum, 379; Mass. Centinel, Oct. 24, 1787.] This very address was emphatically approved by General Washington in a letter to David Stuart, dated October 17, 1787.

TENCH COXE, of Pennsylvania, one of the leading statesmen, and most lucid political writers of that period, said that though the federal constitution was to be adopted by the people, "yet it was to be done in their capacities as citizens of the several members of our confederacy. . . . Had the federal convention meant to exclude the idea of union, that is, of several and *separate* SOVEREIGNTIES *joining in a* CONFEDERACY, they would have said, 'We, the people of America,' for union necessarily involves the idea of competent states, which complete consolidation excludes. But the severalty of the states is frequently recognized in the most distinct manner, in the course of the constitution." [III. Am. Museum, 160, 244.]

SAMUEL ADAMS, a signer of the Declaration of Independence, than whom none was more patriotic and zealous, or more active, influential, and able in establishing the federal polity, declared, in the convention of Massachusetts, that the amendment proposed by her (and afterwards adopted by the states), that "all powers not expressly delegated by the constitution were reserved to the several states," was "consonant with the second article of the present confederation, that *each state retains its* SOVEREIGNTY, freedom, and independence, and every power . . . not expressly delegated to the united states." [II. Ell. Deb. p. 131.] And he wrote to Elbridge Gerry, in congress, that this amendment, which he urged the adoption of, would be "a line drawn as clearly as may be, between the federal powers vested in Congress, and the distinct SOVEREIGNTY *of the several states*, upon which the private and personal rights of the citizens depend." [III. Life of Samuel Adams, Letter to R. H. Lee, July 4, 1789; also letter to Elbridge Gerry.]

Another Decade of Witnesses. — The mass of evidence is already overwhelming, but for the purpose of grouping, for general use, the principal contemporaneous statements of what our system of government is, and likewise of showing how studious the expositors of the Massachusetts school must have been, to avoid citing and fairly presenting the real authorities on this momentous subject, I will add the testimony of ten more of

> "The few, the immortal names
> That were not born to die."

ROGER SHERMAN, one of the committee to draw up the Declaration of Independence, and a signer of the same, a member of the federal

convention, and of the ratifying convention of Connecticut, declared that "*the government* of the United States *was instituted by a number of* SOVEREIGN *states* for the better security of their rights, and the advancement of their interests."[1]

Would not the Shermans of to-day find this Revolutionary worthy and his compatriots the best guides? Why turn the people away from old beacons, to follow will-o'-the-wisps?

OLIVER ELLSWORTH, who was afterward chief-justice of the United States, spoke of the union as a "confederation," and said: "the constitution does not attempt to coerce SOVEREIGN *bodies — states* in their political capacity," but only provides for legal coercion of individual citizens. [II. Ell. Deb. 197.]

CHANCELLOR PENDLETON, the president of the ratifying convention of Virginia, spoke of the people of Virginia as "the fountain of all power," and said: "If *we* [Virginia] find it to *our* interest to be intimately connected with *the other twelve states*, to establish one common government, and bind *in one ligament the strength of the thirteen states*, we shall find it necessary to delegate powers proportionate to that end; for the delegation of adequate powers in this government is no less necessary than in our state government." [III. Ell. Deb. 297.]

JOHN MARSHALL, afterwards the celebrated chief-justice of the United States, said, in the same convention, in reference to the fear expressed by Henry and Mason, that "*a state* might be called at the bar of the federal court," and judicial coercion be attempted, "it is not rational to suppose that THE SOVEREIGN POWER should be dragged before a court." [Ibid. 555.]

JAMES IREDELL, one of the chief statesmen of North Carolina, afterwards on the supreme bench of the union, expressed similar views, and said he thought the federal senate "necessary to preserve completely *the* SOVEREIGNTY *of the states*." [IV. Ell. Deb. 133.]

FISHER AMES, the great orator of Massachusetts, afterwards her senator in Congress, and one of her most eminent statesmen, said in her convention: "The senators represent *the* SOVEREIGNTY *of the states* . . . in the qualities of ambassadors." [II. Ell. Deb. 46.]

THEOPHILUS PARSONS, "the celebrated chief-justice" of Massachusetts, one of the ablest and most influential members of her convention, said that the senate was designed "to preserve *the* SOVEREIGNTY *of the states*." [See Memoirs of Parsons, p. 98.]

CHRISTOPHER GORE, also one of her leading statesmen, said, on the same occasion: "The senate represents *the* SOVEREIGNTY *of the states*." [II. Ell. Deb. 18.]

[1] The citation for this is misplaced; but in VI. Life and Times of John Adams, 440 will be found the same statement of Sherman's views, with but slight verbal changes.

Governor James Bowdoin said, in the same convention, in advocacy of the new system, that "without a confederacy, *the several states, being distinct* SOVEREIGNTIES, . . . would determine the disputes that might arise, . . . by the law of nature, which is the right of the strongest." [II. Ell. Deb. 129.]

George Cabot, another statesman of high rank in Massachusetts, said, in his argument for the constitution: "The senate is a representation of *the* SOVEREIGNTY *of the individual states.*" [Ibid. 26; see also Memoirs of Parsons.]

Only a Federation of Sovereignties was Possible. — Many more such extracts might be presented, but these will suffice; for, among the leading fathers, there was no dissent. Indeed, there could be, on this subject, no difference of opinion, since the states were equal. No authority was above them; sovereignty belonged to each commonwealth as an essential part of her nature; every organic law expressed or implied it; and the solemn league between the states declared that each retained her sovereignty. This all comprehensive right must have remained in her till she completed the work, and, of course, afterwards. The established *status* of these commonwealths, and the law of their beings, absolutely controlled the action of the fathers. Moreover, these were members, citizens, subjects, and servants of their respective states, and had *no authority* whatever to bind them, and, *a fortiori*, none to impair their integrity and sovereignty. The said states associated, and bound themselves by name, as distinct and complete political bodies [Art. I. § 2, and Art. VII.], declared their compact of association to be established "*between the states so* [*i.e.* by their respective conventions] *ratifying the same*" [Art. VII.], and provided for governing themselves in federal matters, by electing and empowering their own citizens and subjects, as their servants and agents, to perform governmental duties. [Art. I. §§ 2, 3; Art. II. § 1.]

I show, then, in this chapter, not only that the fathers declared the union to be a federation of "SOVEREIGNTIES," but that equal, distinct, and sovereign states could not combine for general government by any other system. And we shall see that all federal history supports me. The views of the great architects will be hereinafter given more at length.

The very authors of the great movement for "a more perfect union," and "a more efficient general government," were the men that made the above utterances. They were the very men who laboriously matured each and all of the provisions of the constitution; who represented the people, knew their will, and tried to do it; whose every explanation was corroborated, and position sustained, by the final sovereign acts of their respective states, as will be quoted and shown;

and who were all selected afterward by the people to carry the organized system into effect. Not a molehill can be built up opposite to this mountain of testimony.

Professors of Fact, as well as of Law, wanted. — In conclusion of this chapter, I must express the hope that certain of our professors of constitutional law, will become professors of constitutional facts, and in future editions of the "History of the Constitution," the "Constitutional Convention," the "Political Grammar," etc., quote and comment on the foregoing, and numerous other kindred passages which the records of the country contain, and which *must* appear in any *true* history or *unsophistical* exposition of our federal system; also that our lawyers, editors, politicians, and so-called statesmen may learn from the above and subsequent extracts, what few of them seem to know, namely, that state sovereignty is not a mere deduction, made by Jefferson and others, after the federal compact was formed, and expressed originally in the Resolutions of 1798 and 1799, but is a great and indestructible *fact* or *entity*, which was recognized by all the fathers as *essential* and *vital* to each commonwealth of the federalized states, and as an *integral part* of such state's being. Jefferson only bore the relation to state sovereignty, that the advocate does to the pre-existent truth he utters or expounds.

CHAPTER VIII.

THE SUBJECT IS FACTS.

IN an exposition of our general polity, we have mainly to do with pre-existent sovereign states, and their actions, as facts; with their general constitution as a fact; with testimonies as to its character, derived from public records and historic statements; with contemporaneous explanations of meanings and understandings by statesmen and states; and, finally, with technical definitions by publicists. These are all matters of fact, and our system — fully evidenced by them — is itself a stupendous fact or entity to be described.

Interpretation comes after Establishment. — *After* the constitution was established and completed as a political entity, and was susceptible of being characterized and technically named, the congress of the states, on the 13th of September, 1788, recommended to the several commonwealths that they should proceed to appoint electors of President, and elect their delegations to the congress; and that, *on the 4th March*, 1789, "THE CONGRESS, TOGETHER WITH THE PRESIDENT, *should, without delay, proceed* TO EXECUTE THIS CONSTITUTION."

When they "*proceeded to execute*" their duties, these sworn officials, upon finding some word, phrase, sentence, or clause that was ambiguous or otherwise doubtful, reached for the first time the field of interpretation. But this could have nothing to do with the pre-established system in which they were to work. A law under a monarchy, aristocracy, or republic, would require one and the same construction to determine its meaning, if couched in the same language; and the ascertaining of duty or rights, from doubtful words or phrases, by functionaries, is a very different thing from describing and characterizing the political system or form of government. The *essentials* and the *character* of the system were fixed and passed in the beginning, as facts or truths; but interpretation will go on to the last syllable of language, and of recorded time.

So-called Schools of Interpretation.— While commenting on this subject, I will use as a text, an erroneous statement of Hon.

George T. Curtis, especially as he is now considered the best representative — if not the chief teacher, of the so-called "Massachusetts School." In a letter dated July 25th, 1868, is the following passage: "There have always been, in this country, two schools of interpretation, taking opposite views of the constitution of the united states," etc.

I shall now try to show that this assertion is incorrect, and likely to mislead. Whether the constitution is a compact or not; and whether it makes a federation of the states, or nationalizes them into one state — are questions of fact, to be settled by the instrument and historical evidences. Look at the map, and reflect a moment upon the states there represented; we see communities, — each thoroughly organized and capacitated to do every possible act of a nation. They are political entities, — established facts, as palpable and distinct as the stones of a pavement or the pillars of a colonnade. We find, in the historical records, that each state, at the very time that all were framing, discussing, and ratifying the constitution, was sovereign, and was so described by herself in her organic law, and by all the states in the federal compact, just as George III. had done by treaty. We find also, in the same records, that each of the states, in ratifying the constitution, did it in her own time, place, and convention, and by her own absolute vote, — the first state ratifying December 7, 1787, and the last, May 20, 1790. And, lastly, we find from Article VII. that the constitution was to be "established between the states so [*i. e.* by conventions] ratifying." These are facts which even Deity cannot destroy or impair; and they, according to all publicists, precisely fill up the definition of a league or union of states, just as, according to all lawyers, certain facts fill the definition of murder or larceny.[1]

Now, a class of persons in our country have persistently asserted these facts in political writings, speeches, state papers, commentaries, party platforms, and law books. They recognize as so many absolute political entities the united republics of America, — in other words, "the United States of America," — this being the descriptive phrase of the constitution, the title of the federation. They simply repeat the truth. They neither form nor belong to any "school of interpretation."

But after forty years had passed over our federal system, during

[1] Jeremy Bentham in his "Fragment on Government" [p. 12] says that any one who speaks or writes on the subject of law, takes on himself two characters, that of expositor, and that of censor. "It belongs to the former to explain what he supposes the law is; to the latter to tell us what he thinks it ought to be. The former, therefore, is principally occupied in stating, or in inquiring after, *facts*, the latter in discussing reasons."

which all its friends held the idea of associated states, and the kindred idea that the people were sovereign commonwealths which, in self-government, separately attended to all home affairs, and jointly to a few general and all foreign affairs, there arose and grew, under the auspices of Nathan Dane, Joseph Story, and Daniel Webster, what is called "the Massachusetts school."

The Chief Expounders. — DANE was an original enemy of the constitution, and he probably wished his strictures to pass as expositions: STORY, broad-minded, thought a grand nation, and power among nations, might, could, would, and should grow from construction, and he was in the potential mood; and, moreover, his construction meant fabrication: while WEBSTER, as the advocate, aimed at the triumph and pecuniary advantage of his state and section; and directed his great intellect and luminous logic to the sophistical disproof of his own principles; viz., that "the original parties to the constitution were the thirteen confederated states," and that their constitutional obligations "rest on compact and plighted faith." These are his very words, which, when he approached his final account, he substantially reiterated, — but alas! too late; for he had then produced those "public convictions," as Mr. Curtis calls them, which brought war and woe! As to MR. CURTIS, he seems merely to repeat and amplify what the others have written or said.

The "School" was one of Perversion. — Even this was not a "school of interpretation," as Mr. Curtis would fain have us believe, for its dogmas were not the result of interpretation, but were assertions of fact which were true or false, and which, at the time the constitution was being established "between the states ratifying the same," were charged upon the federal system by its enemies, and disproved by its friends.

Daniel Webster taught the said dogmas in 1830–33, substantially as follows: that the constitution was made by the people of all the states, acting as one state or nation; that they therein divided the powers they chose to grant, between their general and local governments; that their said constitution, as far as it went, "effectually controlled state sovereignty," — thus reducing states to provinces, or counties, but "expressly reserving" to them, such "political rights and powers" as they — the said nation — wished them to possess; and that the right of determining the extent of its powers, belonged to the government itself. Story's teachings were similar. Lincoln substantially repeated these ideas in 1861, as did the Philadelphia convention of 1866, and the "New York World," in its issue of June 3d, 1868!

All these expounders assert that the constitution contains these ideas, though in fact no words of it express or imply them. Nor can

they be evolved by construction. They were, as facts, true or untrue, when the constitution was discussed by the states, and, *a fortiori*, when it was ratified by nine of them, and thereby established. Hence the proof of the action of the commonwealths, and the solemn statements of the fathers, herein faithfully given and to be presented, are of infinite importance, for they end doubt, and the pseudo "school of interpretation," at the same time.

In 1787–88 these very ideas were unavailingly urged as charges against the federal system by Lowndes, Henry, Martin, Yates, Lansing, and other enemies thereof; and but for the disproof of them by Hamilton, Madison, Wilson, Dickinson and others, the said system would have been overwhelmingly defeated. The constitution was fully established, and it formed a federation or not, in July, 1788. Such a thing as practical interpretation could not then arise, for it was *thereafter* that the government provided for had to be elected, organized, installed, and set to work under the constitution; and it was only *after* these things were done that, in congress and the courts, interpretations to find the intent of specific articles or clauses could be had or were needed. Hence the peculiar views concerning our polity which distinguish "the Massachusetts school," do not entitle it to be called a "school of interpretation." It asserts as a fact that our *federal* instrument constitutes *a state or nation*, when the truth is, it constitutes *a union of states or federation*. Should we not call it a school of fiction, or school of perversion?

"School" is a Misnomer, except in the Sense of Flock. — Nor do the professed exegetical efforts of the faculty on leading questions seem to entitle them to be called a "school," in any sense, for

1st. They assert, as a fact, that the united states are a national unity or state, because the preamble says: "We, the people of the United States, do ordain and establish this constitution;" when the phrase itself disproves the assertion, necessitating, as it does, pre-existent commonwealths, which, being independent, must voluntarily have come together, as thirteen persons would, for a common purpose, without the associates losing their individuality. This alone is decisive; and the phrases that signify "union of states" and "citizens of states;" the fact that the states are named in the instrument; the seventh and characterizing article; and the numerous historical proofs of the error of the assertion, need not be adduced. 2d. They assert that the article declaring the constitution to be "the supreme law of the land," makes the government which springs from the law, and is subject to the law, supreme over the law-maker. Stating their contention is the *reductio ad absurdum*. 3d. They say that while *the "constitution" created* a national sovereignty for certain "speci-

fied purposes, *it* expressly reserved to the states all other political rights and powers." [World, June 3, 1868; Lincoln, 1861.] As to the "national sovereignty," see the last point. A government in a republic cannot be a sovereignty at all. It can only have delegated powers, and be the creature and subordinate of the delegators. It (the constitution) reserves nothing; but the states that made it, "reserved" all they did not delegate. 4th. They speak of the "constitution prohibiting" states from "laying duties," "keeping troops without consent of Congress," "coining money," etc., etc. [See Mr. Curtis's letter to The Round Table, July 25, 1868]; whereas these so-called prohibitions are self-imposed restrictions upon the states, which the constitution merely evidences.

These few of the numerous "interpretations" show what sort of a school the so-called interpreters of Massachusetts keep. If the word simply implies gregariousness, its propriety cannot be questioned, for the gathering and following have been large. But, aside from interest, the only reason for the following is best given by Jeremy Bentham, in his "Fragment on Government" [page 25].

"Under the sanction of a great name, every string of words, however unmeaning, will have a certain currency. Reputation adds weight to sentiments which, had they stood alone, might have drawn nothing, perhaps, but contempt. . . . Wonderful is that influence which is gained over young minds by the man who, on account of whatever class of merit, is esteemed in the character of a preceptor. Those who have derived, or fancy they have derived, knowledge from what he knows, or appears to know, will naturally be for judging as he judges, reasoning as he reasons, approving as he approves, and condemning as he condemns."

It is surprising, and indeed humiliating, to see how dependent and gregarious the most of our learned commentators, critics, editors, and statesmen are, even in matters of high and momentous duty, requiring independent and conscientious judgment. All must follow some bell. For instance, in our day we have numerous expositors getting an idea or prejudice from Webster or Story, and never looking at the basis of it, but spending the rest of their lives in obtaining sustenance for it, and passing by, in the groping and culling search, innumerable shining, aye, almost dazzling gems of counter-truth, without noticing them.

A Passing Tribute to the Old Bay State. — In proceeding to show that the whole ground of controversy between the federal and the national theories, is covered by averments of fact, or inferences therefrom; and that, as the one theory is plain truth, and the other plain untruth, the American people should stop the controversy at once, by

branding as falsifiers one or the other of the two sets of dogmatists; it is but fair and dutiful to distinguish between the commonwealth of Massachusetts, and those unworthy sons who call themselves or are called "the *Massachusetts* school" of interpretation, while they sap her statehood, pervert her faith, and tarnish her name.

In history she is the most conspicuous of the authors, vindicators, and exemplars of American institutional liberty. Her principles, firmly established and indelibly written by herself, are set forth in the preceding chapters; and the dogmas of the so-called "Massachusetts school" not only find no sanction in her early and genuine history, but are decisively refuted thereby. And though her record may now be suppressed, her wisdom silenced, and her patriotism lulled to sleep, by sophists and scheming politicians, yet her heart is the heart of humanity, whose impulses are pure and just; and it will finally prove to be as true to liberty as the needle is to the pole: —

> "Compulsion, from its destined course,
> The magnet may awhile detain;
> But, when no more withheld by force,
> It trembles to its north again."

Averments of Fact — Skeleton of Argument. — The following propositions will show the subject to be exclusively one of fact, while they exhibit the scope of the present work. The nerves, sinews, veins, flesh and blood, will grow upon the skeleton in the subsequent pages, and, perhaps, make of it "a form of life and light."

THE REPUBLIC.

1. The state is the people thereof: they are the state.
2. No other organization of self-governing people exists.
3. Such societies alone are "the people of the united states."
4. "All political power is inherent" in such societies.
5. So the state constitutions declare or imply.
6. Hence each state is sovereign, *i. e.* has the "all-power."
7. It is a completely organized, self-governing body.
8. The people are not sovereign as individuals.
9. Sovereignty is only predicable of the organized people.
10. Societal organization was completed, in forming the state.
11. Hence, the alleged national society was impossible.
12. All the states have agreed that each is sovereign.
13. That is to say, each has the right of self-government.
14. The voting citizens hold and wield the governing power.
15. The authority of voters is an endowment by the state.
16. With it the voters express the sovereign will.
17. Such state is the republic, or self-governing people.
18. It is the only possible dwelling of sovereign mind.

19. Making constitutions and governing, are functional acts.
20. The state's mind is intact after, as before such action.

THE REPUBLIC OF REPUBLICS.

21. The states in union are the republic of republics.
22. If nation there be, they are the integers — not fractions.
23. Hamilton called them the "essential component parts."
24. Joel Barlow called the states in union federalized states.
25. The fathers all similarly characterized the system.
26. It answers to Montesquieu's "republic of republics."
27. Its members are moral or corporate, not natural persons.
28. The general sovereignty is that of the states allied.
29. They severally delegate "powers," not sovereignty.
30. Their constitution only contains delegations.
31. The convention of '87 called it a "delegation" and a "trust."
32. So Washington wrote, by their "unanimous order."
33. The constitution itself fully sustains the averment.
34. All not delegated are reserved — kept out of the pact.
35. These delegations cannot belong to "trustees" or "agents."
36. Such powers must belong to the delegating states.
37. Hence, the federal government cannot be sovereign.
38. Hence, too, each ratifying and delegating state is so.
39. Each state ratified by exerting her mind and will.
40. This alone subjected her people to the constitution.
41. Hence, 13 states "ordained and established" the compact.

CITIZENSHIP AND ALLEGIANCE.

42. Citizens remained "citizens of different states."
43. So the federal compact declares and implies.
44. The state alone has authority to govern her citizens.
45. The federal powers they obey are delegated by her.
46. Protection and allegiance are reciprocal obligations.
47. Protection is due from the society to the member.
48. Allegiance is due from the said citizen to society.
49. The tie of allegiance, then, is the social compact.
50. By this compact, the will of all wholly governs each.
51. This is the sole cohesive force of a republic.
52. All citizens are members and subjects of states.
53. The transfer of citizenship would dissolve the state.
54. Citizenship or allegiance was never transferred.
55. President Jackson greatly erred in saying it was.

TREASON.

56. Treason is a citizen's breach of allegiance to his sovereign.
57. The society is the sovereign, and object of the crime.
58. "Treason against the U. S." is "levying war against THEM."

59. It is not "levying war against" the nation or government.
60. Nor is it "levying war against" the union or association.
61. But it is "levying war against" the described "*states*."
62. A co-action of state wills established and defined the crime.
63. The power to try and to punish it, is delegated by each state.
64. Obviously the crime is against the guilty citizen's state.
65. Davis and Lee were true to their respective states.
66. Hence they were patriots and not traitors.

True Patriotism is Fidelity to the Commonwealth. — True patriotism must be devotion and fidelity to one's commonwealth. Her institutes or laws, whether federal or domestic, must be obeyed by him, because she commands it. The state, voluntarily joined in defining the crime of treason against the United States, and punishing it. If one of them reverse her will, and disjoin herself, the duty and the crime cease, for *cessante ratione legis cessat lex.*

Indignant expounder! hurl no bolt at me! for Hamilton is my shield: "The state governments," said he, "will, in all possible contingencies, afford complete security against invasions of the public liberty by national authority. In a confederacy, the people, without exaggeration, may be said to be entirely masters of their own fate." [Federalist, 28.]

Government is Mental and Functional Action. — The only mind exercised was that of the commonwealth. Such acts are natural, being just what society was formed for, and being just as little calculated to destroy, or, in any wise impair, the "moral person," *i. e.* the body-politic, as the functional action of the brain, heart, lungs, or stomach is to do so to the natural person. A republican commonwealth's acts of self-government, whether in making constitutions of government, or acting under them, are entirely functional, and not self-destructive or revolutionary, and the mistake of supposing the states were resolved into a new state, by the voluntary and separate action of the thirteen, is alike pitiable and pernicious. If the "public conviction" that this was done, was as Mr. Curtis claims, brought about by Daniel Webster, that great man is to be credited with having produced our "abomination of desolation," — the war against statehood, resulting in the destruction of our glorious commonwealths!

The Minds of the Political Bodies still live. — As the establishment of the federal system was an act of mind, the acting wills must have lasted through the work they began, because they had to complete it, and afterwards cause obedience to it; and because the future duty of amendment, by the same wills, was contemplated and provided for: and accordingly it has been since done several times.

The same mental organism now exists in working order, with complete individuality, and separate mind and will. The states are not nationalized or consolidated into one. Nor are they in any respect changed either in form or substance. They still are the "union of states,"[1] or "united states:" but it remains to be seen whether their wills are enslaved — deprived of volition! — whether the union, once voluntary — is now constrained! whether the once "free, sovereign and independent states" are shackled! — pinned together by bayonets! — whether, in fine, the once proud commonwealths of America are remanded to their provincialism! and brought under the most heartless and unconscionable of all despotisms, — a corporate monarchy!

[1] As "the constitution of the united states" contains the phrases, "united states," "union of states," and "citizens of states," or their equivalents, I will hereafter, for convenience, quote them thus — the following actual phrases being my justification for the last two of them: —

"The several states . . . within this union." [Art. I. § 2.] "New states may be admitted . . . into this union." [Art. IV. § 3.] "Every state in this union." [Art. IV. § 4.] "The citizens of each state." [Art. IV. § 2.] "Citizens of another state." [Art. III. § 2.] "Citizens of different states." [Ibid.] "Citizens of the same state." [Ibid.] "A state or the citizens thereof." [Ibid.] "Citizens of another state." [Amendment XI.]

CHAPTER IX.

CONCLUSIVE EVIDENCE.

TO quote Massachusetts and New York, on the vital points propounded herein, will astonish and instruct the most of our people, while it will show an ample and solid basis for the foregoing theory, and mark a decisive step in the great argument. And their august testimony is all the more fit and forcible, from their being the main sources of perverting exposition, or so-called interpretation.

As the people, in the functional performance of self-government, must act as they are organized and capacitated to do, and govern through agents, the security of their statehood and freedom must mainly be the honor and ability of their functionaries. And "the constitution," as Daniel Webster said, "lays its hand on individual conscience and individual duty," for its "preservation," requiring solemn oaths from its officials; so that one of them who "*acts outside of the constitution*," and uses powers not delegated, *i.e.* powers retained or kept, by the states, *out of* the constitution, is a perjured usurper, as well as a traitor.

So, as to the preservation of the union by the commonwealths. They must observe and act on the terms, through oath-bound agents or representatives; and the sacred faith of each is pledged; so that, if the terms be violated, we have not only official perjury, but an exhibition of Punic faith, which should subject the violators to outlawry under the *jus gentium*.

In a most studied report on the Missouri question, made to the people of Boston, in 1819, by Daniel Webster and others, as a committee [see Appendix E], he says that "the only parties to the constitution, contemplated by it originally, were the thirteen confederated states;" and that the terms of their union "rest on compact and plighted faith." The above expressions show that the hold, and perhaps the only hold, on rulers and states, is on their morality, honor, good faith and conscience, — these, in fact, from the nature of the case, being the main securities of either republican or federal liberty.

Now let Freedom "lay her hand on the individual conscience, and the individual duty" of Massachusetts and New York, for a statement by them of their record as to what our polity is.

The Testimony of Massachusetts. — Assuming her to be what all publicists say a state is — "a moral person;" crediting her with mind and moral sense; and appealing to her honor, plighted faith and conscience, she is respectfully asked what *status* and condition a state has in the union? She answers with her solemn record, made up most deliberately before the world, and under the eye of God, in the terms now to be given.

In 1780, her people, through a convention, and under the inspiration of Freedom, made the declarations now to be quoted; and, decennially, ever since, they have re-declared the same great truths, — the very institutes of Freedom! — all to be found in her present constitution, which supports, in all respects, as will be seen, the idea of the absolute sovereignty of the states in the union, association, or federation, — whichever the system may be called.

The Object of Government. — "The end of the institution, maintenance and administration of government, is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights, and the blessings of life."

The Social Compact. — "The body-politic is formed by a voluntary asssociation of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good."

"We, therefore, the people of Massachusetts," acknowledging the goodness of God, "in affording us" "an opportunity" "of entering into an original, explicit, and solemn compact with each other, and of forming a new constitution of civil government for ourselves and posterity, . . . do agree upon, ordain, and establish the following declaration of rights, and frame of government, as the constitution of the commonwealth of Massachusetts."

A constituting or establishing of the body-politic, more formal and explicit, if possible, is the following, in part second of the constitution:

"*The people* inhabiting the territory formerly called the province of Massachusetts Bay, do hereby solemnly and mutually *agree* with each other, *to form themselves* into a free, sovereign, and independent *body-politic*, or *state*, by the name of — the *commonwealth* of Massachusetts."

This great exemplar of liberty here declares most emphatically, that the phrases "the people," "the body-politic," "the state," and "the

commonwealth," mean the same, as to political existence, and capacity for self-government. It should be ever kept in mind that "the people" are "the state," and "the state" "the people."

No Sovereignty in Government — all Functionaries Agents. — "All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their *substitutes and agents*, and are at all times accountable to them."

The State can change Government at Will. — "Government is instituted for the common good: for the protection, safety, prosperity and happiness of the people. Therefore the people alone have an incontestable, *inalienable*, and *indefeasible right* to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it."

The State to remain Sovereign over Government. — Upon declaring the above, she seemed to stop — deeply reflect — gather strength of will and expression — and imperially declare; as if to prevent forever the possibility of agency swelling to sovereignty, and rising above the states that establish it: "that THE PEOPLE of this *commonwealth* have the sole and exclusive right of governing *themselves* as a free, SOVEREIGN, and independent STATE, and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them, expressly *delegated* to the united states of America, in Congress assembled." [The above italics are the author's.]

In conformity with this declaration that "*the people* of this commonwealth" have the "exclusive right of governing themselves" "*as a sovereign state;*" and that they "will forever exercise" every power which is not "by them *delegated*" to the associated states; Massachusetts most carefully puts her whole adult male population on a war footing; and commands her governor to use them, to "kill, slay, and destroy," all such persons (including of course federal ones) as "shall attempt the destruction, invasion, detriment, or annoyance of this commonwealth;" she exacts an oath of allegiance from all officials, military or other; and punishes a violation of the same (*i. e.* treason), with death! — all of which will be fully shown further along.

New York testifies idem sonans. — In 1776, she, as a provincial body-politic, joined twelve others, in declaring their independence. *Each* was represented by her own deputies, and they were thus able to co-act in congress. Whatever was done, was by a concurrence of individual wills.

In 1777, her first constitution was established, containing the fol-

lowing absolute declarations of sovereign right — principles essential to liberty, and the same yesterday, to-day, and forever!

Considering herself to be the supplanter of British sovereignty, she declared as follows: "All power whatever therein, [*i. e.* in the state of New York] hath reverted to the people thereof; and this convention hath, by their suffrages and free choice, been appointed and authorized to institute and establish a government, . . . calculated to secure the rights and liberties of the good people of this state. . . .

"1st. This convention, therefore, in the name, and by the authority of the good people of this state, doth ordain, determine, and declare: that "no authority shall, on any pretence whatever, be exercised over *the people or members* of this state, but such as shall be *derived from*, or *granted by them.*"

She began the century recently closed, with this declaration; and, though her fundamental law has been several times reconstructed, the declaration stands now! and it will stand forever! for no authority but hers is ever to be exercised on her soil!

She further declares, in her present organic law of government, that "the sovereignty and jurisdiction of this state extend to all places within the boundary thereof, . . . but the extent of such jurisdiction, over places that have been or may be ceded to the united states, shall be qualified by the terms of such cession." [Const. N. Y.] [1]

She also declares it to be "the duty of the Governor, and all subordinate officers, to maintain and defend her *sovereignty* and jurisdiction." [N. Y. Rev. Stat., Ch. I., Tit. 2.]

She also declares as follows, concerning the

Lordship of the Soil, or Eminent Domain. — "The people of this state, in their right of *sovereignty*, are deemed to possess the original and ultimate property in, and to, all lands within the jurisdiction of this state; and all lands, the title of which shall fail from a defect of heirs, shall revert or escheat to the people." [Const. N. Y., Art. I., Sect. 2.]

Virginia expresses it as follows:

"All escheats, penalties, and forfeitures, heretofore going to the king, shall go to the commonwealth" [Const. Va.]; and Judge Kent states the American doctrine to be, that "the *state* steps in place of the feudal lord, by virtue of its *sovereignty*, as the original and ultimate proprietor of all the lands within its jurisdiction." [All the above italics are mine.]

[1] On this subject, Massachusetts declares as follows: "The sovereignty and jurisdiction of the commonwealth, extend to all places within the boundaries thereof; subject only to such rights of concurrent jurisdiction, as have been, or may be granted over any places ceded by the commonwealth to the united states." [See Rev. Stat of Mass., ed. 1836, p 56.]

Federal Sites. — The treatment of Uncle Sam by these high and mighty potentates, is quite consistent with their imperial words.

Massachusetts and New York grant to the united states (not to the nation or government, but to the said states) sites for arsenals, forts, navy-yards, light-houses, post-offices, etc., relying on *their solemnly plighted faith*, not only to guaranty and secure the states, in being and acting as republics, or absolutely self-governing peoples, but to use the said sites *solely for the defence* "and welfare" of said states. The sites of forts Warren, Lafayette, Delaware, Monroe, Moultrie, and others, are acquired and held by the united states, from the respective states in which they are situated, on conditions such as the following, in the act ceding the use and jurisdiction of the site of the Brooklyn Navy-yard: "The united states are to retain such use and jurisdiction, so long as said tract shall be applied to the defence and safety of the city and port of New York, and no longer ["defence and safety of the said state, and no longer," are the words in the Watervleit arsenal cession]. . . . But the jurisdiction hereby ceded, and the exemption from taxation herein granted, shall continue, in respect to said property, and to each portion thereof, so long as the same shall remain the property of the united states, and be used for the purposes aforesaid, and no longer" [see also statutes of Mass., June 17, 1800; June 20, 1816; April 23, 1847; April 21, 1848; May 4, 1853: Stat. Pa., April 18, 1795; Feb. 1, 1796: Stat. Va., March 1, 1821; and Stat. S. C., December 19, 1805.] There are over 50 of these acts in the statutes of Massachusetts, and over 150 in those of New York.

Summing up the Testimony. — Let us now analyze and reduce to averments of fact, the statement of these august witnesses. They show conclusively:

1. That "all power is inherent in *the people*" of the state; and that the phrases, the "sovereign and independent body-politic," "the commonwealth," "the state," and "the people," are all used in one and the same declaration as synonymous. And, to preclude doubt, Massachusetts redeclares her sovereignty with still greater emphasis, as follows: "*The people* of this *commonwealth* have the sole and exclusive right of governing themselves as a free, *sovereign*, and independent *state*."

2. That no power ever goes out of the state, except by *delegation*; that all power belongs to the state as much after delegation as before; and that *delegated* powers must necessarily be used, *for the state, by her "substitutes and agents."*

3. That all the powers in the general government are delegated by, and derived from, the "sovereign and independent bodies-politic," — that is to say, "the commonwealths" or "the states" — "*the people*"

having no *political existence*, or *capacity for political action*, except as such "bodies-politic," or "states." Said DANIEL WEBSTER: "No such thing as sovereignty of government," "is known in North America." "With us, all power is with the people." [Speech of 1833.]

4. That the said "people," "body-politic," "commonwealth," or "state" have an "inalienable and *indefeasible right* to institute, reform, alter, or totally change government," whenever they think proper.

5. That no authority can be exercised in the state but that *derived from* the people thereof, *i. e.* from "the sovereign body-politic," "the commonwealth," "the state."

The Constitution is Law in a State by her Will. — It follows, as will be shown more fully hereafter, that the general government or its functionaries enter Massachusetts or New York solely by her permission; that they command or control persons or things in her territory solely for her, and by virtue of her authority; and that "the united states" (not the government, except as an agent or instrument of the united states) hold use and jurisdiction of sites for forts, navy-yards, etc. from her, for the sole purpose of her and her sisters' defence and safety, under her grant, and subject to her conditions.

The fact of state supremacy will be more plain, if we note and weigh the only act which makes the federal constitution law in Massachusetts. These are the ordaining words: "The convention, in behalf of the people of the commonwealth of Massachusetts, do assent to, and ratify the constitution." New York, and all the other original states, ordained the supreme law in the same way.

The truth is, the states are sovereign, and all the institutions and rulers of the union are subordinate. The states are, as Hamilton said, the "essential component parts of the union" of states, or "the united states;" and the federal government is merely the creation, the instrument, and the subject of the states, — the declaration of the Philadelphia Convention of 1866, that "the Government" has "absolute supremacy," and that both people and states are alike allegiant to it, being hardly entitled to respect or refutation. Still less worthy of notice — though of far higher origin — is that queer figment or fanciful notion of Webster and Curtis, as to the *social compact* forming the people of the united states into a state.

Exposure of the Fallacy of a New Social Compact. — Nay, more, this theory is so egregious a mistake, that ridicule is only disarmed by pity, while argument turns away with scorn. The very object of forming men into society, and giving them a collective capacity to act, is government. Hence, in sending deputies to devise, in holding conventions to consider and ratify, and in electing agents to administer,

the general constitution, the states were exercising the God-given right of self-government, and doing only natural and functional acts; and were not dissolving themselves, or yielding their sovereignty. Accordingly, we find no hint in all American history, tending to show that the people, or the states, were in 1787 and 1788, *forming society;* while all history, and all the records of the country show that they were *establishing government for preformed and pre-existent societies.* So much for the Webster and Curtis social compact, and involuntary union!

Again, these societies had, by successful revolt, changed themselves from *provinces* to "free, sovereign, and independent *states;*" that is to say, they had gained the right of self-government, that peculiar thing that alone distinguishes a state from a province or county. These states had this right in 1787, and then voluntarily acted with and according to it, *each* with her own separate will, in her own separate time, and through her own separate convention, *ratifying*, and, as to herself, *ordaining* the constitution. When did each state lose the great right referred to? When did the voluntary union become an involuntary one?

Politically the People exist and act as a State. — The states, and their absolute individuality, being stubborn facts, that will not "down" at any "bidding" whatever, no one can argue correctly on these subjects, who does not start with a conception of them as "moral persons," each with mind and will, and only capacitated to act on political matters, as such *persons*, and through such *minds.*

Says VATTEL (p. 14): "A state or political society is a moral person, inasmuch as it has an understanding and a will, of which it makes use for the conduct of its affairs, and is capable of obligations and rights." Again (p. 1): "The authority of all over each member, essentially belongs to the body-politic or state." Blackstone and Montesquieu teach the same idea.

Said WILLIAM H. SEWARD, at Auburn, N. Y., October 20, 1865: "This absolute existence of the states, which constitute the republic, is the most palpable of all the facts which the American statesman has to deal with. . . . The states *were*, before the American union *was*. . . . Our federal republic forever must exist, through, not the creation, but the combination, of these several free, self-existing, stubborn states. . . . They are living, growing, majestic trees, whose roots are widely spread and interlaced within the soil, and whose shade covers the earth."

As will be seen, all history and all the fathers show that the commonwealths must be kept in mind, in all reasoning on political subjects, as "the most palpable of all the facts the American statesman

has to deal with." They must be kept in mind as "the parties to the compact;" the members of "the confederacy;" the "essential component parts of the union;" and "the sovereigns" of their respective territories. These are the phrases of that other great son of New York, Alexander Hamilton, used in reference to the present system.

The Stumbling-block of the "Expounders." — The Massachusetts school are loth to admit "the people" and "the sovereign body-politic or state" to be one and the same, and that the collective people in question form a "moral person," and must act as such in government. They seem to think that the existence and action of distinct and free political minds, make the union "a rope of sand;" and they are unwilling to admit that the said association depends on moral cohesive force, instead of coercive power. They simply fail to "rise to the height of the great argument" of God and our fathers, — that the people are capable of self-government, and that the union is one of pre-existent and absolutely distinct commonwealths, uniting themselves voluntarily, on the grounds alone of amity and mutual interest.

The "Sacred Ties" according to Washington. — GEORGE WASHINGTON, in his letter to R. H. Lee, August 22, 1785, says: "There is nothing which binds one country or state to another, but interest: without this cement, the Western inhabitants can have no predilection for us, and a commercial connection is the only tie we can have upon them."

Two years afterwards, viz., July 19, 1787, he wrote to the same: "Till you get low down the Ohio, I conceive that it would be to the interest of the inhabitants thereof to bring their produce to our ports; and sure I am, there is no other tie by which they will long form a link in the chain of federal union."

About five years afterward, and about three years after the federal system had gone into effect under his administration, viz., August 26, 1792, he wrote to Hamilton, counselling mutual forbearance, conciliation, and accommodation, "and such healing measures as may restore harmony to the discordant members of the union." "Without these," continued he, "I do not see how the union of the states can much longer be preserved."

These extracts, and the whole Farewell Address, promulgated in 1796, show his idea to have been, that amicable feeling and mutual interest were principal among "the sacred ties that bind together the various parts." After showing the sentimental cohesion, he speaks thus: "But these considerations, however powerfully they address themselves to your *sensibilities* [italics mine], are greatly outweighed by those which

apply more immediately to your interest;" and then he goes on to enumerate the many grounds of interest, which should motive the people to preserve the union. [See Farewell Address.]

It is well here to say, that in all Washington's political writings, the pith of which will be found in two subsequent chapters [Part III. Chs. X. and XI.], he nowhere hints at that coercive preservation of the union, which the expounders of to-day claim to be the duty of "the government," but which the framers of the constitution carefully considered, severely reprobated, and rigidly excluded, as will hereafter be most conclusively shown.

The "Sacred Ties" according to Jackson and Burke. — Instead of saying, as by some he is quoted, "The union must and shall be preserved," ANDREW JACKSON says: "But the constitution cannot be maintained, nor the union preserved, in opposition to public feeling, by the mere exertion of the coercive powers of government: the foundations must be laid on the affections of the people, in the security it gives to life, liberty, and property in every quarter of the country, and in the fraternal attachments which the citizens of the several states bear to one another as members of one political family."

EDMUND BURKE'S grand voice sounded consonantly and appositely in the British Parliament: "My hold on the colonies," said he, "is the close affection that grows from common names, from kindred blood, from similar privileges and equal protection. These are ties which, though light as air, are strong as iron. Let the colonies always keep the idea of their civil rights associated with your government, they will cling and grapple to you, and no power under heaven will be able to tear them from your allegiance." But, continued he, "the cement is gone, the cohesion is loosened, and everything hastens to decay and dissolution," if they are deprived of their privileges and subjected to wrong and oppression.

The Union is only Voluntary Engagements. — These great men do but express the truth, that none but voluntary ties of union can exist among associate republics; for, when involuntariness supervenes, the republic ceases. In the case before us, the associates guaranty to each commonwealth that she shall continue to be and act as a republic, *i.e. govern herself.* [Const. Art. IV. § 4.] If she be kept tied to anything, be it tree, wall, or union, against her will, she is not free, or republican.

If the safety and interest of the parties be secured and justice done to them in the union, contentment and amity, the elements of "domestic tranquillity," are sure to follow. And, if the American republics remain as they were, — the *primum mobile* of all government, ruling collectively in federal matters, and severally in local; if the idea

of an involuntary union be abandoned; if mutual good-will and mutual justice prevail, so that the commonwealths desire to remain united; and, finally, if the general governing authority faithfully do that, and no more, which the functionaries of it are all sworn to do, — the "essential component parts of the union," as Hamilton called them, will never wish to be sundered, but will remain united by ties which are "strong as iron," "though light as air!"

"Union and Liberty, now and forever!" — In the beginning of this second century of "union and liberty," — that is, of *federal liberty*, — we should take a new — or rather retake the old — departure. Liberty dwells, and must ever dwell, not in the league or union, and not in the constitution of government, but — in the people as republics; and *the people*, collectively and individually, *must feel, use, and enjoy it*. This is what God and our fathers intended; what Massachusetts and New York so imperially declare; and what, under their lead, we should patriotically strive for, now, henceforth, and forever!

Let us preserve the Commonwealths. — Self-preservation is alike the first law of nature, and the first duty of those to whom the Almighty has given a sentient existence. Men have an individual being, and, in society, a corporate one, — both of God. And when the commonwealth exercises its mind, or, in the last resort, its physical force, in preserving itself and its freedom, it is acting precisely according to the above law and duty, and the members are bound by the social compact to obey her. They thus individually and collectively exercise the right, and discharge the duty of self-preservation; and at this ever-to-be-remembered epoch, the highest moral obligation devolves on Massachusetts, to say nothing of New York, to take the lead again, and promulgate her sacred and glorious principles of liberty. And henceforth, every new state, or old one, requiring a new constitution, should copy that of Massachusetts, as to social compact, bill of rights, and even form of government. Expounders can then no longer dispute, hide, or pervert the truth.

Let all declare the true principles of Liberty. — And let all the commonwealths determine to be such, from this time forward; and let them respectively declare in the language of the great exemplar — the Old Bay State: —

That *the people of this commonwealth* have the sole and exclusive *right of governing themselves* as a free, *sovereign*, and independent *state*; and they will forever exercise every power and right, which may not be by them *expressly delegated* to the united states, assembled in congress;

That *all power*, residing originally in *the people*, and being derived from them, *all officers* of government are their *substitutes and agents*, and are at all times accountable to them;

And, finally, that *the people of the commonwealth* alone, have an *inalienable and indefeasible right to institute government*, and to reform, alter, or *totally change* the same, whenever they think their safety and happiness require it.

The States are now provincialized. — Before July 4, 1776, the nascent states were provinces, their wills being controlled, and they kept in dominion, by a power exterior to themselves, and over their wills. At that time, they became "free, sovereign, and independent" parties to a voluntary and a happy union. In 1876, we found them again subject to an exterior will, in all matters deemed, by that will, necessary and proper. The mind and power that ruled at Washington, claimed and enforced "absolute supremacy." *Sovereign wills in states had existed and acted* in forming the present union: they then existed no more! In what, said Lincoln, are our states better than counties? Did he realize that they were subjugated; and that "*the government" had changed itself from agency to sovereignty* — "*the very way*," said Burke — and it cannot be quoted too often — "*in which all the free magistracies of the world have been perverted from their purposes?*"

Invocation. — People of the united states! let us begin the new century by close adherence to the union of our fathers; the union of sovereign and independent commonwealths; the voluntary union that Lee and Davis, and Seward and Chase, were educated to believe in, and revere! Let the *fasces* be always lowered before the supreme sovereignty of the people. Spurn the idea of "*absolute supremacy of government" in a republic!* Ever regard your general constitution of it, as federal, and based on the commonwealths of people, — the rock of original power. If you leave it on the shifting sands, "great will be the fall of it!" and in the ensuing night and sorrow of despotism, you will come

> "To think — as the damned haply think of the heaven
> They once had in their reach — that you might have been free."

May God preserve and bless the American commonwealths, and may their motto ever be: "UNION AND LIBERTY! NOW AND FOREVER! ONE AND INSEPARABLE!"

PART II.

FEDERALIZATION.

THE two most consoling principles which political experience has yet brought to light, are those on which we have founded our constitutions. I mean *representative democracy* and the FEDERALIZING OF STATES.

JOEL BARLOW.

PART II.

FEDERALIZATION.

CHAPTER I.

THE ACTORS — THEIR MOTIVES AND PURPOSES.

THE thirteen states or commonwealths of America that united their strength to achieve independence; and afterwards federated to establish a general government, and secure their statehood and freedom; were so many "moral persons" (as Vattel calls them), distinct in existence — distinct in body — and distinct in mind and will. Each had its own name, geography, people, social organization, and political authority.

When, in 1787, these bodies proposed to associate themselves in a "more perfect union" and to establish a "more efficient general government," it was perfectly obvious that they could only act, in doing so, through their respective wills, as they had done in their previous association.

By their successful revolt, they became sovereigns in place of Great Britain, *ipso facto*, changing themselves from provinces to states, or commonwealths.

These bodies of people were organized and capacitated to act, politically, as individuals. Each had its own mind, with the characteristics and modes of action that the mind of the natural person has; to wit, perceptive faculties, reasoning powers, judgment and will, — a convention being the organ for ascertaining and expressing such will. This governing will must survive its making of a constitution; as otherwise it cannot command and enforce obedience on its subjects; or reform, change, or abolish its work, if subsequent experience show it to be defective, harmful, or unpromotive of the desired ends. These political beings act, each with its own mind, and, of right, consider and decide all governmental questions; for each is a republic or self-governing people, which must provide for its own defence and welfare, and settle for itself, directly or indirectly, all questions of interest, policy, or principle, as well as of right and duty.

At the epoch mentioned, these states were considering the subject of a permanent federal system, which should "provide for the common defence, and promote the general welfare" of themselves, — that is to say, of "the people" that constituted them.

In September, 1786, in pursuance of a call upon the states, "commissioners" from the commonwealths of New York, New Jersey, Pennsylvania, Delaware, and Virginia, met at Annapolis, to consider a commercial policy for the union; but as only five of the thirteen states appeared, they contented themselves with a recommendation, that a convention of commissioners of states should be held at Philadelphia, in May, 1787, "*to devise such further provisions, as shall . . . render the constitution of the federal government adequate to the exigencies of the union.*" [I. Ell. Deb. 116.]

In appendix C hereof, will be found extracts from all the commissions of the deputies of the states to the convention of 1787, showing the universal idea to be, the "uniting of the sentiments and councils of all the states," in changing the old "federal constitution," as it was called, into such new one as "will be adequate to the exigencies of the federal government, and the preservation of the union," when "agreed to in congress, and confirmed by the several states." [For full credentials see I. Ell. Deb. 126.]

Statehood to remain Intact. — It will be seen that, throughout all the deliberations up to the adoption, the prevailing aim and understanding was, that the states should keep their statehood and sovereignty intact, and should accomplish their purpose by *delegating*, but not surrendering or alienating powers.

William Patterson, of New Jersey, made a statement in the convention of 1787, that shows most clearly the principle that finally prevailed. After saying that all the commissions of the delegates required them to revise, alter, and amend the articles of union, he proceeded as follows: "Can we, on this ground, form a national government? I fancy not. Our commissions give a complexion to the business; and we cannot suppose that when we exceed the bounds of our duty, the people will approve our proceedings. We are met here as the deputies of thirteen independent *sovereign* states, for federal purposes. Can we consolidate their sovereignty, and form one nation, and annihilate the sovereignties of our states, who have sent us here for other purposes? . . .

"But it is said that this national government is to act on individuals, and *not on states*; and cannot a federal government be so framed as to operate in the same way? It surely may. I, therefore, declare that I never will consent to such a system. Myself or my state will never submit to tyranny or despotism." [I. Ell. Deb. 403.]

We shall see, in our progress, that both in the convention, and before the people, the federalists completely overcame the nationalists.

We shall see statehood completely preserved — the pre-existent unchanged states being named in the compact, and provided for, to act, with their respective wills, in government, and future amendment.

We shall see that the constitution was to be ratified, and thereby ordained and established, by separate but associating commonwealths, acting through their respective conventions; all history and the solemn records proving *this action* (*and no other*) to have given life and vigor to the constitution.

We shall see that the government was to be endowed with power solely by the states, not to act on and over the states, but on their citizens and subjects; that coercion of states was considered as war, and prohibited; and that the new plan was intended to be merely "the federal government of these states," and the "delegation" of an "extensive trust" — as Washington wrote to the congress, "by unanimous order of the convention," which had laboriously devised the plan, and must be supposed to have thoroughly understood their own work. [See I. Ell. Deb. 305.]

In the next ensuing chapters, however, my purpose is to show that the states in 1788, federalized themselves, "to form a more perfect *union*" *of states* than their previous one; and to institute a stronger and "more efficient federal government" than the one of 1778; that they are the be-all and the end-all of the system; and that the second union is a more pronounced confederacy than the first.

The Chief Aims of the States. — They desired to be united, because they were neighbors, on the same expanse of territory; were of common origin, and similar political organization; held the same principles and views of government; and finally had the same needs, — in considerable part, as to home, and altogether, as to foreign policy.

Their leading aims and ideas were:

1. "To unite in one ligament the strength of thirteen states," — to use the words of Chancellor Pendleton, in the Virginia ratifying convention.

2. To enable *themselves* to act as *one* nation, or power, in foreign affairs.

3. For economy, convenience, and good neighborhood, they sought to establish an agency for governmental affairs that were common to all.

4. To close up as many as they could of possible points of controversy among themselves, as neighboring powers or states. Those settled ceased to be, while those unsettled remained international.

5. That each state should exclusively govern in home affairs.

6. That statehood and the sovereignty of the states, should be preserved unqualifiedly and forever!

The Principal Changes contemplated were the following:

1. A complete government was to be provided for in the new plan; while the old was only a legislature, without co-ordinate executive and judicial institutions, and without any independent power to effectuate its so-called laws.[1]

2. The new government was to operate directly on the individual subjects, having authority delegated, by the sovereigns, for that purpose, while the old could neither coerce states nor people.

3. The unlimited power to levy and collect taxes, for providing for the common defence, etc., was to be in the new, but was not in the old government.

4. Commerce, the currency, and some other subjects of less though great importance, were to be put in the new project, though they were not under the old government.

These were the most essential changes; and they were devised with great deliberation, study, and care, by the most eminent and able citizens, subjects, and deputies of the aforesaid commonwealths. And to give the new institution a higher and more majestic sanction, than that of the old, *the communities of people themselves*, through their conventions, and not their ordinary agencies, the legislatures, were to adopt it, so as to have the fabric "rest on the solid basis of *the consent of the people*." [Federalist, 22.]

In fine, the states *federalized*, and did not *nationalize* themselves. The former would necessarily be done by equal sovereigns, while the latter would make them counties or provinces of a nation, remanding them to their British condition.

All history shows that to each state the question was put: Will you adopt this instrument, and become a party? Thirteen finally answered yes — each expressing her own absolutely uncontrolled will by ratifying through their respective conventions; and became the thirteen united states — thirteen united sisters — thirteen united

[1] The power of congress to make laws on the subjects confided to it, implied, to some extent, the power of providing executive and judicial authority to effectuate them; but the agents provided for, were necessarily the agents of an agency; and the states neither promptly complied with the federal requirements, nor allowed the needed full and final enforcement of them on their citizens. Hence the great *desideratum* was to establish a new executive and judiciary — not subordinate to congress, but co-ordinate with it — deriving their existence and power directly from the said creators — the governing people, and, with congress, possessing the same agential and coercive authority over the individual people that the state governments have.

Thus was American federal government made to "rest on the solid basis of the consent [*i.e.* will] of the people," instead of the consent or will of the people's legislatures [See Federalist, 22.]

sovereigns — thirteen united commonwealths — thirteen united republics.

Preliminary Remarks on Federalization. — I will now proceed to show how each state as a body-politic gave to the federal compact its only validity within her borders; how the thirteen states devised and created the federal system as a mode and agency for exercising their self-government in their general affairs, and considered the constitution of it as an addition to their respective fundamental laws; how the powers delegated were trusts to be exercised by their elected subjects, who collectively form the federal government; and how the said compact, and the government under it, were to be, and remain in necessary subordination to the associated states.[1]

All this will be shown by a full and careful exhibition of the acts of the states themselves, and the contemporaneous explanations of the fathers, who represented and acted for them. We shall see that the great design of the states was (as Joel Barlow expressed it), to "federalize" themselves, and to avoid consolidation; to make a *federal* and to avoid a *consolidated* government; in other words, to remain in the necessary condition of allied sovereigns, governing themselves — jointly by a federal government, and severally by state governments.

It will be seen that each of all the thirteen states, of her own motion, in her own time, by her own law, and in the plenitude of her own sovereign will, held a convention, and therein carefully deliberated and finally decided as a state, independently of the authority of the other states of the so-called nation, and of all the world, to "assent to and ratify" the federal constitution, *i. e.* to become a party thereto, and to give the said constitution, and the government it provided for, existence and jurisdiction within her borders. Inferentially, Article VII. of the compact, conclusively proves all this, for it declares that "the *ratification*" of nine states shall *suffice* for "the *establishment* of this constitution between the states so ratifying the same;" but this is not enough, for I wish to show the perversions to be not only baseless, but sins against light and knowledge.

[1] The first edition of this work was published in England in the summer of 1865, and largely circulated in America; and the second was issued in New York, early in 1866. So far as the author knows, it was then the only work extant, putting the federal constitution, in a given state, on its actual and only legal basis, as the offspring of the will of that state, expressed by ratification, through a convention.

Mr. A. H. Stephens' valuable and instructive work entitled "The War Between The States," Vol. I. published in 1868, apparently adopts the same view, and gives mainly the same evidence and arguments. But it must be said, with due deference, that Mr. Stephens falls into the cardinal error of supposing sovereignty to be divisible into powers, and susceptible of delegation and reservation; and moreover utters the glaring fallacy that sovereignty can be subject to the powers it delegates, "so long as the delegated power is unresumed." These errors will be duly noticed.

In giving the history of each state's action in ratifying the federal compact, I shall quote her ordaining words, which are of infinite importance, as *the only expression of sovereign legislative will, that ever made the constitution "the supreme law," or indeed, any law at all, in any state.* It will be found that the false charges which well-nigh defeated the system, are identical with the fallacious expositions of "the Massachusetts school" in later times. It will also be seen that though Dane, Story, Webster, and Curtis now assert that a nation was formed, the states reduced to subjection, and the government made sovereign, all the fathers are on record to the contrary, in the most direct and positive manner.

With the name of each commonwealth will be given the order and date of her ratification, as well as her vote in convention. Let us first take the case of Massachusetts. The italics in the extracts are mainly my own; where otherwise it will be noted.

CHAPTER II.

MASSACHUSETTS FEDERALIZES HERSELF.

THE SIXTH TO RATIFY—VOTE 187 TO 168—DATE FEB. 7, 1788.

THOUGH Massachusetts was the sixth to ratify, her pre-eminence in making, as well as the efficiency of her "school" in afterwards destroying, the constitution, and the richness of her record in material for the purpose in hand, make it advisable to present her case first. It will be seen that her record decisively refutes the many volumes of pretended constitutional exposition, emanating from her sons and her press; and that all her history is opposed to the theory of the "Massachusetts school," viz., that "the people of the united states," are a nation, *i. e.* one sovereign people, represented by a national government, which is possessed of "absolute supremacy" so far as its vested powers go, and is the exclusive judge of the extent of said authority. In those days, she was the stickler, *par excellence*, for state sovereignty; took the lead in demanding amendments to secure it, and had a boasted influence to that end, on the subsequently ratifying states; and she, as will be seen, was the very proposer of the celebrated Tenth Amendment, which, as Samuel Adams explained in the convention — with the assent of all — meant that "each state retains her *sovereignty*," as well as "*all powers not delegated.*" [II. Ell. Deb. 131.]

The Substance of the Objections. — The opposition charged that the phrase in the preamble, "we the people of the united states . . . do ordain and establish this constitution," coupled with the powers given in the instrument, transmuted the pre-existent states to a nation, the said states becoming fractional parts, *i. e.* provinces or counties; that, as the constitution was to be "the supreme law of the land," the government was to be a supreme power; and that, as this government was to have the unlimited right of taxation, and the control of the militia for all national purposes, and was itself to be the judge of the extent of its powers, it followed that so far as the constitution went, "so far" (to borrow the subsequent phrase from Webster) "state sovereignty was effectually controlled." It was quite natural that the people should be doubtful and apprehensive, and that much

honest as well as wrongful opposition should be made, for the federal convention had deliberated in secret, and the new system had transpired suddenly, while its seeming form was unwarranted. The question was whether the *sovereignty of the states* and the *subordination of the government*, were preserved in the new system; and the great fears were, that the instrument consolidated the states into a nation; or established a government that could control them, and do away with their statehood and sovereignty.

Everybody opposed to Consolidation. — Washington, under "the unanimous order of the convention," reported the new project to congress in a letter, dated September 17, 1787, which contains the following little phrase: "in all our deliberations on this subject, we kept steadily in our view . . . the consolidation of our union." Literally this phrase does not speak of the states; but it is the union of them that is to be consolidated, that is to say, increased in utility, efficiency, and strength, made more solid and strong, and more likely to endure. And, as will now be shown from her debates, this precisely accords with what her statesmen said, in her ratifying convention, in defence of the proposed system. One quotation will suffice to present the charge as made in the convention. Hon. Mr. Dench thought "the words, 'we, the people,' in the first clause ordaining the constitution," and the eighth section of the first article, "would produce a consolidation of the states, and the moment it begins, a dissolution of the state governments commences." [H. Ell. Deb. 98, 99.]

General Brooks immediately replied that the idea that this constitution would produce "consolidation" of the states, or "dissolution" of their governments, was "ill-founded — or, rather, a loose idea. In the first place, the congress under this constitution cannot be organized without repeated acts of the legislatures of the several states; and, therefore, if the creating power is dissolved, the body to be created cannot exist. In the second place, it is impossible that the general government can exist, unless the governments of the several states are forever existing; as the qualifications of the electors of the federal representatives are to be the same as those of the electors of the most numerous branch of the state legislatures. The powers to be given to congress amount only to a consolidation of the strength of the union." [H. Ell. Deb. 99.] This is the same idea that was expressed by the president of the Virginia convention, as the object of union, viz., "to bind in one ligament the strength of thirteen states." And all the fathers constantly kept it in view, that the states were combining their strength for defence, as well as joining for convenience, economy, and efficiency in the general government of their citizens.

Colonel Varnum said the purpose of the constitution "was only a consolidation of strength;" and that the states were not to be consolidated by it, and, moreover, that the congress provided for had no right to affect them. "It is," said he, "the interest of the whole to *confederate* against a foreign enemy." [II. Ell. Deb. 78.]

Hon. James Bowdoin not only denied that there was danger of consolidation in the system, but he spoke of it as "a *confederacy*, which would give security and permanency to the several states;" that is to say, preserve them. [II. Ell. Deb. 129.] Judge Sumner argued that there was no danger that "the delegation of these great powers would destroy the state legislatures, . . . for the general government depended on them for its very existence." [Ibid. 64.] Hon. Mr. Sedgwick said that "if he thought this constitution consolidated the union of the states, he should be the last man to vote for it." [II. Ell. Deb. 77. See also Massachusetts Centinel, Feb. 2, 1788.]

In the small volume of "debates" of the ratifying convention, published by the state early in the present century, at page 316 is to be found the following account and extracts. Mr. Shurtleff, referring to General Washington's letter above mentioned, objected that "the convention said they aimed at a consolidation of the union." Mr. Parsons, afterwards the Chief Justice of Massachusetts, said there was "a distinction between a consolidation of the *states*, and a consolidation of the *union*." Mr. Jones said that "the word 'consolidation' had different ideas." "Different metals melted into one mass," he said, illustrated one, and "several twigs tied into one bundle," the other.

Hon. Mr. Dana, afterwards Chief Justice of Massachusetts, said, in the same debate, that "if this government was a consolidation, instead of a confederation, he should think the number [of representatives] too small. But, as it is *federal*, and we have our own governments to support, the expense [of a larger number] would be too great." [Memoirs of Chief Justice Parsons, p. 93.] George Cabot, writing to Judge Parsons, February 28, 1788, said that one of the great fears of the people was, that the constitution makes "such a consolidation of the states as will dissolve their governments," but that the equal suffrage in the senate "is security that no measures will ever pass tending in the smallest degree to consolidation." [See Memoirs of Judge Parsons; see also Amory's Life of Governor Sullivan, p. 534.]

Fisher Ames, the great Massachusetts statesman and orator, said: "No argument against the new plan has made a deeper impression than this, that it will produce a consolidation of the states. This is an effect which all good men deprecate. The state governments are

essential parts of the system. The senators represent the sovereignty of the states. They are in the quality of ambassadors of the states. . . . A consolidation of the states . . . would subvert the constitution. Too much provision cannot be made against consolidation. The state governments represent the wishes and feelings and local interests of the people." He further said that they would "afford shelter against the abuse of federal power," and that "the system would be, in practice as in theory, a *federal* republic." [II. Ell. Deb. 46.] Though other extracts could be produced, these will suffice. I have piled up this mass of proof to make Massachusetts refute her own sons; to expose their offence in suppressing or garbling her record to get excuses for violating her sacred faith; and to prevent further confidence in them as to these subjects. But this is not all; for the record further shows *the direct opposite* of consolidation, to have been the solemn understanding on which Massachusetts ratified. Let us see.

The Severalty and Sovereignty of the States. — Her wise men in the convention gave to her, many and most emphatic assurances on this point. I have just quoted Fisher Ames as saying, "the senators represent the sovereignty of the states." [II. Ell. Deb. 46.] Judge Parsons said the senate was designed "to preserve the *sovereignty* of the states." [See his "Memoirs" by his son, p. 98.] Christopher Gore, for many years one of her leading statesmen, said: "The senate represents the *sovereignty* of the states." [II. Ell. Deb. 18.] Governor Bowdoin said the states are "distinct *sovereignties*." [II. Ell. Deb. 129.] George Cabot, afterwards one of her federal senators, said the "senate is a representation of the *sovereignty* of the individual states." [II. Ell. Deb. 26.] Mr. Thacher said: "The senate are elected by the legislatures of the different states, and represent their *sovereignty*." [II. Ell. Deb. 145.] Samuel Adams said that, under the new constitution, "each state retains her *sovereignty*." [II. Ell. Deb. 131.] Other similar quotations might be given, but it is not necessary, as none of the fathers dissented, and as the then existing federal compact, and the constitution of Massachusetts, both contained assertions of absolute state sovereignty, which the fathers neither sought to nor could go behind.

"We, the people," means Massachusetts. — The phrase, "the people," was then used in a general sense, as it is now; for the people of all the states were alike in political condition, had common sentiments, and aimed at self-government, not only as *societies*, such as they then were, but as *united societies*, which they were then seeking to become. Their contemplated self-federalization was for convenience, economy, and united strength. "The people," then, only ex-

isted, and had capacity for political action, as states; and, as these bodies were equal, they must have been respectively sovereign. Consistently with this idea, the organic laws of the states generally declared that "all power is inherent in the people,"— the state making the declaration referring to herself, of course, for she made it independently, and had no right or reason to make it for any other people. Wherefore, we shall find the phrase, when technically and constitutionally used, to mean the people of a state, or the people of the states, considered as sovereignties. The records of all the states show this, as will be seen. I now proceed to give the conclusive proof Massachusetts affords. Her own record shows her to be as autocratic as the Czar in decreeing her institutions, state and federal, as well as in her present political status. When her people, as a separately and thoroughly organized colony, assumed independence, and "*by a social compact*," to use their own words, formed themselves into a state, they solemnly preambled as follows: Thanking God for the opportunity of deliberately entering into "an original, explicit, and solemn compact with each other," and "forming a new constitution of civil government for themselves and posterity," they declare that "*We, the people of Massachusetts*, . . . do agree upon, ordain, and establish the following declaration of rights and frame of government as the constitution of the commonwealth of Massachusetts." And it in no wise qualifies the sovereign character of the said "We, the people" that they establish a federal government, for this must exist by their creation, hold their powers in trust, and hence remain subordinate to them. Indeed, the same fundamental law that I have just quoted from, declares that "*the people of the commonwealth* have the sole and exclusive right of governing themselves as *a free, sovereign, and independent state*," and that *they* "forever hereafter shall exercise and enjoy every power, jurisdiction, and right, which is not . . . *by them* expressly delegated to the united states in congress assembled." [See the *present* constitution of Massachusetts, Part I. Art. 5.]

What her Statesmen meant by "We, the People." — We see, from the above fundamental law, that her delegates, agents, and servants, whether in the federal or state convention, were absolutely bound to mean her alone, when they spoke or wrote the phrase, "We, the people;" for, collectively, they were her mouth-piece, and were only authorized to speak the voice of *her* power. Let us see what they say. I shall quote somewhat copiously, as the debate is very instructive, and as Massachusetts completely destroys the theory of "the Massachusetts school."

Dr. Charles Jarvis, an able member of the convention, said: "Under what authority are we acting? . . . We are convened in

right of *the people*, as their immediate representatives, to execute the most important trust which it is possible to receive." "He considered the constitution as an elective democracy, in which the sovereignty still rested in the people," *i.e.* remained where it had been, — in the state. He further spoke of the convention as "*the whole people of Massachusetts assembled by their delegates*," and said: *We* are "at liberty to resolve in what form this trust shall be executed." "*We* have a right to receive or reject the constitution." [II. Ell. Deb. 151.]

Samuel Stillman, a prominent member of the convention, after showing that the president, the senate, and the house of representatives are to be elected by or for "*the people of the several states*," continued: "It will be *their* own fault, then, if they [*i.e.* the people of a given state] do not choose the best men *in the commonwealth*. Who are congress, then? They are *ourselves*, — the men of *our* choice, in whom *we* confide, whose interest is inseparably connected with *our own*." [II. Ell. Deb. 167.]

Hon. Charles Turner said: "I know great powers are necessary to be given to congress, but I wish they may be well guarded." I know not whether *this convention* will vote a ratification of this constitution or not. If *they* should do it, and have the *concurrence of the other states*," etc. II. Ell. Deb. 32, 171.]

James Bowdoin, afterwards governor, said: "All power is derived mediately or immediately from *the people*, in all the constitutions. This is the case with the federal constitution. The electors of representatives to the state governments are electors of representatives to the federal government." Speaking of the power of imposing taxes, duties, etc., he said: "The states empower congress to raise money." He further said: "Shall *we*, then, *we of this state*, who are so much interested in this matter, deny them that power, — a power so essential to *our* political happiness? . . . Whether such power be given by the proposed constitution, it is left with *the conventions of the several states*, and with *us, who compose one of them*, to determine." [II. Ell. Deb. 81; see also Ibid. 125, *et seq.*]

Theophilus Parsons, afterwards the noted Chief Justice, characterized the new political arrangement as "a government, to be administered for the common good, by the servants of *the people*, vested with delegated powers, by popular elections at stated periods. The federal constitution establishes a government of this description, and in this case *the people* divest themselves of nothing; the government and the powers which congress can administer, are the mere result of a compact made by *the people* with each other for their common defence and general welfare." He speaks of the powers of government being

taken by *the people* from *their* state governments, and put in the federal one. Of course the people of the state alone could do this. [See II. Ell. Deb. 88, *et seq.*]

John Hancock, the president of the convention, as well as governor of the state, spoke of "*the people of this commonwealth*" as having the absolute right to reject or ratify "the proposed form of government." And he considered the federal constitution as "the delegating" of power by "*the people* to men who were dependent on *them* frequently for election." [II. Ell. Deb. 175.]

We see, then, that by "We, the people," in the preamble of the federal compact, the Massachusetts fathers meant, and could but mean, *the people of the states, as commonwealths;* and that they recognized the said states as the sole sources of power, and as the compacting and ordaining parties to a "union of states," formed for "the common defence and general welfare." They unquestionably considered the states as sovereign republics, or self-governing peoples, forming a federal system, or republic of republics.

The Fear of losing Statehood. — The advocates of the new plan conclusively showed that the precious integrity and sovereignty of the states were untouched by it; but the public fear could not be thus allayed. The fact was unappreciated, even if known, that the federal convention had repudiated and excluded from the constitution all ideas of controlling and coercing states; and had only given the federal agency legal jurisdiction and power of coercion over citizens, — such power, of course, coming from, belonging to, and being exercised for, the states. It was owing to the aforesaid vague and general fear, that a bill of rights, and other limitations of, and safeguards against, federal power were generally demanded, — with what result on Massachusetts, we shall now see.

She proposes the Tenth Amendment. — Samuel Adams, one of the great revolutionary leaders of Massachusetts, had, with many others, gone into the convention evidently determined to defeat the constitution, — his unfavorable first impression of that instrument being indicated by the following extract from a letter to Richard Henry Lee, dated December 3, 1787: "I stumble at the threshold. I meet with a national government, instead of a federal union of sovereign states. . . . If the several states are to become one entire nation, under one legislature, its powers to extend to all legislation, and its laws to be supreme and control the whole, the idea of sovereignty in these states must be lost." If he and other leading men had remained under this impression, the federal plan would have been spurned with unanimity, for the ideas, which subsequently became Websterian dogmas, had in those days no friends and advocates;

and the people of the country were all determined that there should be no consolidation of the states, and that state integrity and sovereignty should be absolutely preserved.

Late in the session, when everything foretokened overwhelming defeat, Gov. HANCOCK, representing the leading advocates of the system, came forward with "conciliatory propositions," the substance of which was, that Massachusetts should, at the time of her ratification, propose to her sisters several amendments, to secure the integrity of the states and the subordination of the new government, — the most important of them being the one which, on her motion, as it were, subsequently became the tenth. When he proposed these amendments, he gave his assent to the constitution, "in full confidence that the said amendments would soon become a part of the system;" and said that, as they were "calculated to give security and ease alike to all the *states*, he thought all would agree to them." [II. Ell. Deb. 175.] The effect of these "conciliatory propositions" can be best seen from the response of Samuel Adams. Said he: "Your Excellency's first proposition is 'that it be explicitly declared that all powers not expressly delegated to Congress, are reserved to the several *states* to be by them exercised.' This appears to my mind to be a summary of a bill of rights, which gentlemen are anxious to obtain. . . . It is consonant with the second article in the present confederation, that each state retains its sovereignty . . . and every power . . . which is not . . . expressly delegated to the united states in congress assembled." [II. Ell. Deb. 131.] Confidence (afterwards justified by the event) being felt that these amendments would be adopted; and the great opposition leader expressing himself satisfied, and determined to vote yes, the opponents yielded sufficiently to allow ratification by the very small majority of 19, in a membership of 355 votes, the firm and formidable minority still vaguely fearing that the instrument might be susceptible of the very meaning that Dane, Story, and Webster afterwards, by perversion, put upon it.

The Amendment a Truism, though Useful. — But for the understanding that this amendment at least would be added to the compact, the system would certainly have been defeated, though in reality the said amendment could make no change, it being a mere truism, or, at best, a gloss, and only tantamount to the declaration that all powers not given are reserved, — a self-evident proposition. Still the general understanding that such an amendment was to be made, bore a large and useful part in satisfying the people of several of the states that their sovereignty was preserved in the system, while "powers" only were delegated or trusted to agents. Unquestionably

this was the unanimous sentiment and *sine qua non* of Massachusetts. Her idea was that, by virtue of her sovereignty, which was essentially characteristic and inalienable (as her constitution then declared, and as indeed it declares now), she delegated powers just as a principal would to his agent, to be used for her benefit, and still belonging to her, and subject to her resumption at will; and *ex abundante cautela*, she declared that all not delegated were reserved. Nay, more, the whole agency was necessarily composed of citizens and subjects of the allied sovereigns, elected by them. The wide distinction between *the sovereign right* of delegating authority, and *the powers imparted* by delegation, was afterwards forcibly expressed by Samuel Adams in a letter to Richard Henry Lee, dated July 4, 1789, as to the object and importance of this very amendment. It is, said he, "that the good people may clearly see the distinction — for there is a distinction — between the *federal powers* vested in congress, and the *sovereign authority* belonging to the several states, which is the palladium of the private and personal rights of the citizens." He said further, he hoped for some judicious amendments, "so that the whole people may, in every state, contemplate their own safety on solid grounds, and the union of the states be perpetual." [This, and a like letter to Elbridge Gerry, are in III. Life of S. Adams.]

Now while Hancock, Adams, Ames, Parsons, Bowdoin, and others, were incessantly denying consolidation, and assuring the state that her sovereignty was to be absolute in the new system, why did not some of the Danes, Storys, Websters, and Curtises of that day, get up and remark: "Oh, no, it is not the states, but the nation that is sovereign; it is the people of the states in the aggregate, that now ordain this constitution; and therein they establish a distribution of *their* powers between this, *their* general government, and *their* several state governments; and so far as this constitution goes, 'so far state sovereignty is effectually controlled'"? Suppose the great men I have quoted had, *arguendo*, uttered these Websterian dogmas, would a single vote have been obtained? But no such idea could have been felt by anybody. Why? Because Massachusetts, at that moment, had a standing declaration in her organic law — as well as in the then existing "federal constitution" — that she was a "sovereign, free, and independent state;" and she then was, in the precise character indicated by these superlative and unambiguous words, in convention, determining her will — independently of all the world — as to a federation for herself and other agreeing states, and a general government for their people; and, in that precise character, she was then and there "delegating" — not *sovereignty*, but — "*powers*" to "delegates," "representatives," "substitutes," "agents," "servants," "trustees," etc., as they were uniformly called.

The quotations I have produced were dissented from by no friend of the constitution; they entirely contradict the utterances of the Massachusetts expounders; and we can now see, that a reader must ask himself at every line of the record: "Is this why Story, Webster, and Curtis never quoted from so proper a source of authority as the debates of the Massachusetts Ratifying Convention?"

The Sole Ordaining was by Massachusetts. — The convention ratified the constitution, as follows: "In convention of the delegates of the people of the commonwealth of Massachusetts, 1788. **The convention**, having impartially discussed and fully considered the constitution for the united states of America, reported to congress by the convention of delegates, . . . and submitted to us, by a resolution of the general court of the said commonwealth, passed the 25th of October, last, . . . **do, in the name, and in behalf, of the people of the commonwealth of Massachusetts, assent to and ratify the said constitution for the united states of America.**"

Not in the name and behalf of any nation, or part of a nation, did the convention deliberate upon, assent to, and ratify the instrument, but it was for the body of people called Massachusetts, — a body at the moment absolutely sovereign. As to her, the passage of the above ordinance completed the compact; and it was ESTABLISHED when eight other states did likewise; for, as Article VII. declares, it was "RATIFICATION" by nine states (*i. e.* nine ratifications) that was to be "SUFFICIENT FOR THE ESTABLISHMENT of this constitution between the states so ratifying the same." The federal compact, therefore, received its whole life and validity from Massachusetts and the other ratifying states. She and they must have been "the people of the united states" that did "ordain and establish the constitution." There were no other people in the country than such states, and consequently no ordainers but them. And as to her territory and people, she alone gave it existence, and its authorities jurisdiction, over them. It was not "the people" as individual voters that ratified, but "the people" as states or nations. Massachusetts spoke her sovereign will through her convention, and remained Massachusetts. No institution, nor anything organic, was changed. Pre-existent states simply made a compact, and the federal system became an addition to the political institutions of the country; and, as it was created by, it belonged absolutely to, the states. Nay, more, the administration of it was to be wholly and solely by the subjects of the said states. So that its status is, and must be, simply that of a servant or agent. We have found, then, in the history and records of Massachusetts, one absolute sovereign, acting in the formation of the federal system, or the republic of republics. Now let us look for another.

CHAPTER III.

CONNECTICUT FEDERALIZES HERSELF.

THE FIFTH TO RATIFY — VOTE 128 TO 40 — DATE, JAN. 9, 1788.

THE record of this state agrees precisely with that of Massachusetts, in disproving the consolidation of the states, and proving their most anxious wish to preserve their integrity and sovereignty in the union. To establish this, I will adduce the testimony of her leading statesmen, and conclude with her sovereign decree of ratification, which, as to her, constituted the league called the federal constitution.

What her Statesmen said. — A federation of sovereignties was the object of this state from the beginning, and the great men representing her in the federal convention, considered it accomplished in the constitution proposed. Having carefully guarded against consolidation, two of them, Ellsworth and Sherman, reported to the governor of the state, that the aim in the proposed system was "to provide for the energy of government on the one hand, and suitable checks on the other, to secure the rights of the particular states, and the liberties and properties of the citizens. We wish it may meet the approbation of the several states, and be a means of securing their rights, and lengthening out their tranquillity." [II. Ell. Deb. 491.]

ROGER SHERMAN, one of her greatest statesmen, said: "The government of the united states being federal, and instituted by a number of *sovereign states* for the better security of *their* rights, and the advancement of *their* interests, they may be considered as so many pillars to support it."[1] He wrote to John Adams, July 20, 1789, that "it is optional with the people of a state, to establish any form of government they please, — to vest the powers in one, a few, or many, and for a limited or unlimited time;" and "that they may alter their frame of government when they please, any former act of theirs, however explicit, to the contrary notwithstanding." [VII. Life of John Adams, 411, 440.]

[1] The authority for this extract, which I once had, is lost; but the equivalent is in VI. Life and Times of John Adams, 440. Did he not use these words in the ratifying convention of Connecticut? I have seen it stated that he did.

Oliver Ellsworth, afterwards Chief Justice of the United States, said in the ratifying convention: "A union is necessary for the purposes of a national defence. United we are strong; divided we are weak." He further speaks of "economy," the keeping of peace among the states, and the preservation of commutative justice among them, as among the motives of union. In the federal convention he moved to expunge the word "national" from the constitution, and substitute the words "government of the united states," which was agreed to, *nem. con.* In the ratifying convention of Connecticut, he characterized the union as a "confederation," and said, "the constitution does not attempt to coerce *sovereign bodies*, — *states* in their political capacity;" but that the only coercion contemplated, was the same as that of the state governments, — legal coercion of individual citizens. [II. Ell. Deb. 186, 197.]

Oliver Wolcott, subsequently secretary of the treasury, and senator, said, in the ratifying convention: the constitution effectually secures *the states* in their several rights. It must secure them for its own sake; for they are the pillars which uphold the general system. . . . I am happy to see the *states* in a fair way to adopt a constitution, which will protect *their* rights, and promote *their* welfare. [II. Ell. Deb. 202.]

Governor Huntington spoke of the great movement as "the people meeting together by their representatives, and with calm deliberation framing for themselves a system of government." [II. Ell. Deb. 200.]

Chief Justice Law said: "The whole is elective; all dependent on the people. The president, the senate, the representatives, are the creatures of the people. . . . Some suppose that the general government, which extends over the whole, will annihilate the state governments. But consider that this general government rests upon the state governments [he probably meant states] for its support. It is like a vast and magnificent bridge, built upon thirteen strong and stately pillars. Now, the rulers who occupy the bridge cannot be so beside themselves as to knock away the pillars which support the whole fabric." [II. Ell. Deb. 201.]

"We, the People," means Connecticut. — It is evident that she ratified because her statesmen asserted positively, and proved conclusively, that the "convention of states" had matured a federal system instead of a national one, and that the integrity and sovereignty of the states, as well as the limitation and subordination of the "delegated powers," were absolutely secured. Her convention adopted the constitution by a majority of 88 in 168 members, — such convention speaking as follows in the ratification: "**In the name of the people of the**

state of Connecticut, we, the delegates of the people of the said state, in general convention assembled, pursuant to an act of the legislature in October last, . . . **by these presents, do assent to, ratify, and adopt the constitution,** reported by the convention of delegates in Philadelphia, . . . for the united states of America. Done in convention this 9th day of January, A. D. 1788."

This is the only way the federal constitution got into Connecticut, and this ordinance is the only law by which it exists there; and yet Dane, Story, and Webster have ventured to represent that, instead of the constitution being voluntarily established by Connecticut within her borders, it was made by the people of all the states, as a mass or nation, and imposed on Connecticut as "the supreme law" over her. So far as this constitution goes, said Webster, "so far state sovereignty is effectually controlled."

It is unquestionable, then, that Connecticut ratified as a sovereign, and that, as a party, she remained above the said constituted league, above the "powers" she entrusted, and above the agency created for the exercise of those powers. It could not be otherwise, for the agency was to consist of the elected subjects of the federalized sovereigns, and could but be subordinate to them. We are not called upon to consider whether she could have merged herself, and extinguished her statehood, for the fact is proved that she did not do so. Here, then, is absolute sovereign No. II.

CHAPTER IV.

NEW YORK FEDERALIZES HERSELF.

THE ELEVENTH TO RATIFY — VOTE, 30 TO 27 — DATE, JULY 26, 1788.

IN the convention of this state, the contest was long, severe, and doubtful, principally turning upon the existence or non-existence in the constitution, of the principles now asserted by the Massachusetts school. These were then urged as serious charges. Indeed, two of her delegates, Yates and Lansing, had left the federal convention because they were "opposed to any system," however modified, which had in view the "consolidation of the united states into one government." And, as they feared that the system proposed by the convention had a tendency to that evil, they strove to have it rejected by their state.

What her Statesmen thought of the System. — The views taken and the defence made by the federalists of Massachusetts, were repeated in the convention of New York. The leading constitutionists, with masterly ability, refuted the said charges, and showed that the states were to be preserved intact, as the very basis, nay, as the "essential component parts of the union," and were, as absolute sovereigns, then dividing the powers they chose to delegate, between their state governments and their federal (or league-al) one; the subject then in hand being the creation and endowment of the latter by the compacting sovereign states.

JOHN JAY, the first chief justice under the new constitution, said, in his address to the people of New York, early in 1788, to induce them to adopt the new system: "The proposed government is to be the government of the people: all its officers are to be their officers, and to exercise no rights but such as the people commit to them. The constitution only serves to point out that part of the people's business, which they think proper by it to refer to the management of the persons therein designated. These persons are to receive that business to manage, not for themselves and as their own, but as the agents and overseers for the people, to whom they are constantly responsible, and by whom they are to be appointed." In the same address to the people of New York, from which these words are

quoted, Mr. Jay said: "The states of Georgia, Delaware, New Jersey, and Connecticut, have adopted the present plan;" and he earnestly advised the state of New York to do so. [I. Ell. Deb. 496.] In the ratifying convention, Mr. Jay called the system provided for in the compact, a "union of states," and said "the objects of the general government comprehended the interests of the states, in relation to each other, and in relation to foreign powers." His view obviously was that the states, as sovereign bodies, were compacting and creating a governmental agency, which was to remain subordinate to them, and act as their servitor in "providing for the common defence and promoting the general welfare." [II. Ell. Deb. 282 *et seq.*]

Robert R. Livingston, the chancellor of the state, said, in the same convention: "A republic may very properly be formed by *a league of states;* but the laws of the general legislature must act and be enforced upon individuals. I am contending for this species of government." [II. Ell. Deb. 274.]

He said further: "Our existence as a state depends on a strong and efficient federal government;" but "we" [the people of New York] must see that the power we "entrust to our rulers be so placed as to insure our liberties and the blessings of a well-ordered government." And after stating the fact that "the American people were all agreed upon the great principle of government," that "all power is derived from the people," he spoke as follows: "They consider the state and federal governments as different deposits of that power. In this view, it is of little moment to them whether that portion of it which they must, for their own happiness, lodge in their rulers, be invested in the state governments only, or shared between them and the councils of the union. The rights they reserve are not diminished, and probably their liberty acquires additional security from the division." [II. Ell. Deb. 210.] What people did he mean? Who were dividing their powers, — delegating some and reserving others? Of course, the people of the state, whose convention he was then addressing and advising.

Alexander Hamilton, in the same convention, characterized the new political system as "*a confederacy of states*, in which the supreme legislature has only general powers, and the civil and domestic concerns of the people are regulated by the laws of the several states." [II. Ell. Deb. 353.] "While the constitution continues to be read and its principles known, *the states* must, by every rational man, be considered as *essential component parts* of the union." [Ibid. 304.] "The destruction of the states must be at once a political suicide. Can the national government be guilty of this madness?" [Ibid. 353.] "The question of the division of powers between the general and

state governments is a question of convenience. It becomes a prudential inquiry into the proper objects of the two governments. This is the criterion by which we shall determine the just distribution of powers." "We" — who? "Determine" — what? Evidently "the people" of New York, in convention, were determining "the just distribution" of their "powers." Hamilton did not see "the nation" then establishing a "distribution of powers between this, *their* general government, and *their* several state governments."

John Lansing, the chief opponent of the new system, admitted, in the ratifying convention, that the framers of the federal system designed the senators "to represent" and "to protect the sovereignty of the several states;" but he charged and argued that the operation and tendency of the system would be contrary to the design. [Ibid. 289, 290.]

Ratification in Confidence of Amendments. — All their arguments, however, would have been futile, but for the understanding that the much dreaded danger would be specially forefended by amendment. In the circular letter to the other states, dated July 28, 1788, signed by Governor George Clinton, "by unanimous order of the convention," it was stated that "several articles" were "so exceptionable to a majority of us, that nothing but the fullest confidence of obtaining a revision, . . . and an invincible reluctance to separating from our sister states, could have prevailed upon a sufficient number to ratify it without stipulation for previous amendments." [II. Ell. Deb. 413.]

And the convention, in the very act of ratifying the constitution, did "declare and made known" the following, among 34 articles, declaratory of the understanding of New York: —

I. "That all power is originally vested in, and, consequently, derived from, the people; and that government is instituted by them for their common interests, protection, and security."

III. "That the powers of government may be re-assumed by the people, whensoever it shall become necessary to their happiness; that every power, jurisdiction, and right, which is not, by the said constitution, clearly delegated to the congress of the united states, or the departments of the government thereof, remains to the people of the several states, or to their respective state governments, to whom they may have granted the same; and that those clauses in the said constitution, which declare that congress shall not have or exercise certain powers, do not imply that congress is entitled to any powers not given by the said constitution, but such clauses are to be construed either as exceptions to certain specified powers, or as inserted for greater caution." [I. Ell. Deb. 327.]

What people were then "delegating powers" for "their happiness" and "security"? The people of the state, of course. By what people, then, was the power at that moment being "delegated," to be "re-assumed" when "necessary to their happiness"? The nation "re-assuming" power "delegated" by the state is a gross solecism, and by this single sentence the whole argument against the right of secession is scattered to the winds!

Decisive Proof that "we, the People," means New York. — To conclude the case of New York, I quote the ordaining words of her act of ratification, and beg the reader to reflect that there is no breath of federal existence, or shade of federal power, in New York, except what comes therein by virtue of these words: —

"**We, the delegates of the people of the state of New York,** duly elected and met in convention, having maturely considered the constitution of the united states of America; . . . **in the name and behalf of the people of the state of New York, do, by these presents, assent to, and ratify the said constitution.**"

In the body of the ordinance, and as a part thereof, the convention declare that they ratify, with the understanding that "the rights aforesaid cannot be abridged or violated;" that "the explanations" made are consistent with the constitution; and that they do it, in confidence that the amendments "proposed" will receive an early and mature consideration. The ratification was carried by a majority of 3 in a membership of 57. Suppose Dane, Story, and Webster had been there, to talk of the nation or aggregate sovereign people "distributing *their* powers between *their* state governments and *their* general government," — the said nation sovereign and the states subordinate, — why, they would have been derided, and the federal plan spurned from the convention!

Here is the decisive act of the political body called New York, "assenting to and ratifying" the constitution, with her own free and absolute will, precisely as any sovereign state of Europe would have given her assent to any agreement with co-equal states. *This ordinance is the only possible act of sovereign authority* putting in force in New York the federal compact and its resultant government. It was the will of New York, and not that of any nation, that then and there made and finished the "supreme law." From her, and her sister sovereigns, the government then received its existence, its status, and the power it was to exercise in trust "for the common defence and the general welfare." It is absurd to suppose this delegated authority could ever become coercive authority over the sovereigns, principals, and masters that had delegated it; or to suppose that such authority did not remain simple legal jurisdiction, to be enforced by legal

means, over the individual citizens of the states, — such jurisdiction being derived, as aforesaid, solely from the said sovereigns, whose subjects all citizens respectively are. Hence we see that New York remained, as she intended to be — an absolute sovereign in the union.

Her Present Autocratical Declarations. — New York now repeatedly declares, in her fundamental laws, her absolute sovereignty in the union, — even rivalling Massachusetts in her imperial self-assertion. *Exempli gratia*, she declares, in her constitution, adopted November 3, 1846, that "the people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property, in and to all lands within the jurisdiction of the state." [Const. of N. Y. § 2.]

She also declares, as part of her fundamental law, that "the sovereignty and jurisdiction of this state extend to all the places within the boundaries thereof, as declared in the preceding title; but the extent of such jurisdiction over places that have been, or may be, ceded to the united states, shall be qualified by the terms of such cession." [I. Rev. Stat. N. Y.] Note that it is "jurisdiction," and not sovereignty, that is to be qualified. We shall hereafter see that the federal government has foothold, to exist and act, in any state, only by permission and grant of the sovereign commonwealth, and strictly according to the terms of such grant.

She declares, further, that "it shall be the duty of the governor, and of all the subordinate officers of the state, to maintain and defend its sovereignty and jurisdiction." [Ibid.]

She further declares, that "no member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers;" and that "no authority can, on any pretence whatsoever, be exercised over the citizens of this state, but such as is, or shall be, derived from, and granted by, the people of this state." [Const. N. Y. Art I. § 1; Rev. Stat. ch. IV. § 1.]

Judging, then, from her own federal history and present declarations, no more absolute sovereign than New York exists on earth. She alone has the supreme right of government upon her soil, and the federal government exists and acts there solely as her agent.

CHAPTER V.

NEW JERSEY FEDERALIZES HERSELF.

THE THIRD TO RATIFY — VOTE, UNANIMOUS — DATE, DEC. 18, 1787.

IN the convention of states, New Jersey was represented by Governor William Livingston, David Brearly, Wm. Patterson, and Jonathan Dayton. These statesmen, with the delegates from Connecticut, Delaware, and other minor states, insisted on the strict principles of federation being observed; and, as will be seen, they were completely successful, vanquishing their opponents in argument, as well as in voting. So satisfactory was the plan adopted, that they signed it, and aided at home to procure the ratification of their state, which was unanimous.

The Views of her Statesmen. — WILLIAM PATTERSON, who, in the federal convention, introduced the plan of the new system, known as the New Jersey plan [see I. Ell. Deb. 175], said that "the amendment of the confederacy was the object of all the laws and commissions upon the subject." "The commissions under which we act are not only the measure of our power: they denote, also, the sentiments of the states on the subject of our deliberation. The idea of a national government, as contradistinguished from a federal one, never entered into the mind of any of them; and to the public mind we must accommodate ourselves." [V. Ell. Deb. 176.] He said, further, in reference to a plan tending to consolidation: "We are met here as deputies of thirteen independent sovereign states, for federal purposes. Can we consolidate their sovereignty, and form one nation, and annihilate the sovereignty of our states, who have sent us here for other purposes? . . . But it is said that this national government is to act on individuals, and not on states; and cannot a federal government be so formed as to operate in the same way? It surely may. I therefore declare that I will never consent to the present system, and I shall make all the interest against it, in the state I represent, that I can." [I. Ell. Deb. 403.]

These remarks were made early in the session (June 9, 1787), when it was proposed to give the small states power in the new system only in proportion to their numbers, and when their delegates feared that

they would be gradually merged into a nation. The plan that finally prevailed, as will be seen, was, as he then expressed it, "*a federal government*," "so formed as to operate" "*on individuals, and not on states.*"

I have many kindred expressions from the New Jersey statesmen, but not having space for them, I select the above as the most pithy, as well as a fair specimen. It is also one of the most accessible ones to the common reader. Moreover, it fairly represents the theory which predominated in the federal convention, not only in two or three decisive votes, but generally in the plan adopted. Strict federal principles prevailed. The states, as political bodies, were to be the parties federating, and were to remain unchanged, as the actors in the system. They were to continue to hold, of original right, all the elective power. Each was to choose, from her own citizens and subjects, her representatives, her senators, and her electors of President; and these, with the officers they — acting as agents of the states — should appoint, were to be the government. All federal acts, then, were to be the acts of the states, through their representatives and servants, and the government consisting of these, could but be subordinate to the creating and electing sovereignties.

"We, the People" of New Jersey. — The federal delegates not only approved the plan, but they assured their state that her integrity and sovereignty were safe. Congress, as the agent of the states, sent the plan to New Jersey. The legislature, on the 29th of October, 1787, enacted that a convention should meet at the capital, and "then and there take into consideration the aforesaid constitution, and, if approved of by them, finally to ratify the same, in behalf and on the part of *this state*." [I. Ell. Deb. 320.]

The convention was held, and the constitution thoroughly discussed by sections; but no debates having been preserved, we must resort to the journals, political writings, etc., of that day, to learn the prevailing ideas. Here is an extract from an address to the people of the state, to induce them to accede: "By whom are those taxes to be laid? By the representatives of the several states in congress, . . . in perfect conformity to that just maxim in free governments, that taxation and representation should go hand in hand. To what purpose are these taxes to be applied? To pay the debts, and provide for the common defence and general welfare of the united states. Although I drew my first breath in New Jersey, and have continued in it during my life, firmly attached to its local interest, yet when I consider the impossibility of its existence, at present, *as a sovereign state, without a union with the others*, I wish to feel myself more a citizen of the united states than of New Jersey alone." [American Museum, Nov.,

1787.] The idea was to unite *the states*, to preserve their sovereignty, and the involved blessings of their respective citizens. The following extract is instructive: "The convention of New Jersey was composed of accomplished civilians, able judges, experienced generals, and honest farmers." As "the groundwork of its proceedings" it "resolved that the federal constitution be read by sections; upon which the general question shall be taken, whether this convention, in the name and behalf of the people of this state, do ratify and confirm the said constitution." [Massachusetts Centinel, Jan. 6, 1788.]

New Jersey unanimously ratified as follows: "In convention of the state of New Jersey. . . . Now be it known that **we, the delegates of the state of New Jersey**, chosen by the people thereof for the purpose aforesaid, having maturely deliberated on and considered the aforesaid proposed constitution, **do hereby, for and on behalf of the people of the said state of New Jersey, agree to ratify and confirm the same, and every part thereof.** Done in convention, by the unanimous consent of the members present, this eighteenth day of December, A.D. 1787."

The federal constitution and government have no existence or power in New Jersey, except by virtue of this ordinance. This, as to her, *constitutes the league* called the *federal constitution*.

CHAPTER VI.

PENNSYLVANIA FEDERALIZES HERSELF.

THE SECOND TO RATIFY — VOTE, 46 TO 23 — DATE, DEC. 12, 1787.

PENNSYLVANIA was the first of the states to call a convention; though the opponents compelled a month's debate, thus allowing Delaware to bear off the honor of the first ratification. It was in the convention of this state, however, that the first grand contest over the new system took place, and the vindication of it is peculiarly significant and interesting. The charges were mainly those we have already reviewed. One-third of the 69 members issued an able address, putting them strongly, and winding up with the assertion that "consolidation pervades the whole instrument." The system had just transpired from what was called a "secret conclave," and it was alike seemingly novel and really surprising. The people feared that it would overshadow and gradually destroy the state, while they were intensely anxious to preserve her sovereignty.

In a subsequent chapter, I shall take Pennsylvania as an exemplar, to exhibit the original formation of an Anglo-American state, and show how thoroughly separate she was in settlement, organization, and government; how the people of the prospective commonwealth were habituated to the traditions and ideas of complete political disconnection, except as to the sovereign, England: how the people of the state were declaredly England's successor in the sovereignty; how all the states joined in acknowledging and guaranteeing each to be sovereign [see art. II. of the first federal compact]; how the statesmen, in all they did, were obliged to obey and conform to, and not impair and destroy, this sovereignty; and, finally, how the federation, being one of republics, named in the compact and remaining unchanged, must, in the nature of things, be and continue purely voluntary. Precisely consonant with these ideas are the explanations of the statesmen of Pennsylvania, now to be given.

She associates as a Sovereign. — TENCH COXE, one of her great leaders, and one of the ablest political writers of that day, explained that the constitution was to be "the act of the people;" "yet," said he, "it is to be done in their capacities as citizens of the several mem-

bers of our confederacy, who are declared to be the people of the united *states*." [Am. Museum for February, 1788.] With express reference to consolidation, he said: "If the federal convention had meant to exclude the idea of 'union' — that is, of several and separate *sovereignties* joining in a confederacy — they would have said: 'We, the people of America;' for union necessarily involves the idea of competent states, which complete consolidation excludes." [Ibid.] In reference to the senators in congress, he said: "Each of whom will be chosen by the legislature of a free, *sovereign*, and independent state." [Am. Museum for October, 1787.] And in meeting the objection that the new constitution contained no bill of rights, he wrote as follows: "The old federal constitution contained many of the same things, which, from error or disingenuousness, are urged against the new one. Neither of them has a bill of rights; nor does either notice the liberty of the press, because they are already provided for by the state constitutions; and, relating only to personal rights, they could not be mentioned in a contract among *sovereign states*." [Ibid.] Here we have the idea, so frequently brought to view, that personal or private rights are already secured by the social compact, the obligation of which requires the body-politic or state to protect them; and that the great object of the federal compact was to make the securers secure, that is, to unite the states for their common defence and general welfare.

James Wilson, a leading member of both the federal and state conventions, one of the very first statesmen of that period, and afterwards one of the federal supreme judges, said, in the ratifying convention, to allay the fear that the state governments might not be preserved, that "upon their existence depends the existence of the federal plan." In answering the question where sovereignty resided, he said: "The supreme, absolute, and uncontrollable power is in the people, before they make a constitution, and *remains* in them after it is made. . . . The sovereignty *resides* in the people. This principle settled, they can take from the state governments *powers* with which they have *hitherto trusted* them, and place them in the general government, if it is thought they will there be productive of more good." Of course, he could only mean that the authority which formed the state government could withdraw and redelegate the said "powers," and this could but be the state as a commonwealth of people. The following extracts show this. He compared "the advantages and necessity of civil government among individuals" with those of "a *federal* government among *states*." Of course, he knew that in the self-formation of a free society of men or states, the integrity of the constituents must be preserved. In none of his speeches or writings does he disregard

this idea. "The united *states*," said he, "may adopt any one of four different systems. *They* may become consolidated into one government, in which the separate existence of the states shall be entirely absorbed. *They* may reject any plan of union or association, and act as separate and unconnected *states*. *They* may form two or more confederacies. *They* may *unite* in one federal republic. Which of these systems ought to have been formed by the convention?" After showing the inadmissibility of the first three, he proceeds: "The remaining system which the American *states* may adopt is a union of *them* under one confederate republic. . . . This is the most eligible system that can be proposed." Quoting from Montesquieu, he proceeds to say: "Its description is 'a convention by which several *states* agree to become members of a larger *one* which they intend to establish. It is a kind of assemblage of *societies* which constitute a new *one*, capable of increasing by means of further association.'" [For the above extracts, see II. Ell. Deb. 421–8.]

In these extracts, Wilson recognizes the states as the absolute actors, and necessarily the sovereigns, and gives no support to the idea of Story, Webster, and Curtis, that a nation ratified and established the constitution, though the last named seems to quote from him with great partiality in support of the national theory. The reader will please note, also, that Wilson here recognizes the idea of republics uniting in a republic of republics, *i. e.* of "*societies* which constitute *a new one*."

One more extract will suffice. Early in October, 1787, he said in a speech at Philadelphia: ". . . Let it be remembered, then, that the business of the federal convention was not local but general; not limited to the views and establishments of a single state, but coextensive with the continent, and comprehending the views and establishments of thirteen independent *sovereignties*." [Mass. Centinel, October 24, 1787; also Am. Museum.] This and several other equally striking passages from Wilson's speeches, Mr. Curtis failed to quote in the "History of the Constitution."

Dr. Franklin, who was at the time the president of Pennsylvania, proposed in the federal convention, a second branch of the congress, in which "each state should have equal suffrage," "in all cases or questions wherein the *sovereignties* of the individual states may be affected, or whereby their authority over their own citizens may be diminished." [V. Ell. Deb. 266.]

Whom did she mean by "We, the People." — Chief Justice McKean, afterwards governor, said in the ratifying convention: "The power of this convention is derived from *the people of Pennsylvania*." The members, he said, had been "chosen by the people, for the sole purpose of assenting to, or *ratifying*, the constitution proposed for the

future government of the united states, with respect to their general and common concerns, or of *rejecting* it." "It has been moved that *you* resolve 'to assent to and ratify this constitution.' Three weeks have been spent in hearing objections, . . . and it is now time to determine whether they are of such a nature as to overbalance any benefits or advantages that may be derived to *the state* of Pennsylvania by your accepting it." [II. Ell. Deb. 530.]

Said JAMES WILSON, in the same body, on this subject: "The single question to be determined is, shall we assent to and ratify the constitution proposed? As this is the first *state* whose convention has met on the subject, and as the subject itself is of great importance, not only to *Pennsylvania* but to the united *states*, it was thought proper, fairly, openly, and candidly to canvass it. . . . We were sent here to express the voice of *our constituents* on the subject." [II. Ell. Deb. 494.] And in his speech at Philadelphia, Oct. 6, 1787, in showing that a bill of rights was not needed, he said: "It would have been superfluous and absurd to have stipulated with *a federal body of our own creation*, that we should enjoy those privileges of which we are not divested, either by the intention or the act that has brought that body into existence." [Mass. Centinel, October 24, 1787.]

These remarks of McKean and Wilson, which met no dissent, are enough to show the idea of all to be that the state, *ex mero motu*, was acting as a sovereign. But the proof is made complete by the ordinance of ratification, the substantial words of which follow: "In the name of the people of Pennsylvania. Be it known unto all men, that **we, the delegates of the people of the commonwealth of Pennsylvania, in general convention assembled, . . . by these presents do, in the name and by the authority of the same people, and for ourselves, assent to and ratify the foregoing constitution for the united states of America.** Done in convention at Philadelphia, the 12th of December, 1787." [I. Ell. Deb. 319.]

In conclusion, we find that the federal history of Pennsylvania gives no support whatever to the Massachusetts school. The false and dangerous notions of Dane, Story, Webster, and Curtis, which then appeared as charges by foes, were despised and repudiated, and the elder and better Massachusetts ideas prevailed, — that sovereign states were the actors in forming and empowering the new system; that it was a confederacy of states, or republic of republics, that was being formed; that the constitution of it was the concurrent written will of the self-associated states; and that the agency, or administrative body of the system, was composed exclusively of the members and "subjects" of the states.

We find Pennsylvania, then, to be another absolute sovereign of our federation.

CHAPTER VII.

DELAWARE AND MARYLAND FEDERALIZE THEMSELVES.

THESE two states will be disposed of together, as they made but a small record, owing to the readiness of their accession. But their acts of ratification afford us two more proofs of the federal (or league-al) system. Let us first give the case of

DELAWARE.

The first to Ratify — Vote unanimous — Date, December 7, 1787. — This little state figures in American history as the first to ratify the constitution. Her ready adoption is strong evidence that the system was a federation of equals, for she was determined to preserve herself. Moreover, her chief men gave her such explanations and assurances as the following from John Dickinson, who had been her as well as Pennsylvania's president, who was a member of the federal convention, and one of the great political writers of that period. He habitually called the new system "a confederation of the states," and he said it was the duty of the congress under the system, "to reconcile in their determinations, the interests of several sovereign states." [II. Pol. Writings of J. D.]

"We, the People" of Delaware. — Space will not permit extensive quotations, so I will conclude her case by presenting her idea of what "we, the people," meant, just as she then, by and in the act of ratifying, impressed it upon the world. The Pennsylvania Gazette, of Dec. 20, 1787, says that "while *Delaware acted* thus speedily, *Pennsylvania is debating* the ground by inches, having been in session almost a month, and being yet engaged on the first article." The Massachusetts Centinel, of Dec. 26, 1787, has the following: "DELAWARE. — The deputies of the state convention of Delaware, met at Dover, on Monday, the 3d inst., and, a house being formed, they elected James Latimer, Esq., president. On Thursday, they ratified the federal constitution by a unanimous vote, and on Friday, every member signed the ratification, as follows: **We, the deputies of the**

people of Delaware state, in convention met, having taken into our serious consideration the federal constitution proposed and agreed upon, by the deputies of the united states, at a general convention held at the city of Philadelphia, on the 17th day of September, A. D. 1787, have approved of, assented to, and ratified and confirmed, and **by these presents**, do, in virtue of the powers and authority to us given for that purpose, for, and in behalf of ourselves and constituents, fully, freely, and entirely **approve of, assent to, ratify and confirm the said constitution**. Done in convention at Dover, Dec. 7, 1787." [See also I. Ell. Deb. 319.]

This was a complete and final act of sovereign will, by a state, as such; and when the constitution, according to its terms, went into effect, it was this and twelve other like acts that gave it all the life and validity it ever had, or could have, as to the thirteen united or associated states. And it was from these acts that the entire existence and jurisdiction of the high and mighty "government" flowed. Moreover, this "government" was composed personally and entirely of the citizens and subjects of the ratifiers. It is, then, obviously both fallacious and absurd to say that so far as this constitution goes, "so far state sovereignty is effectually controlled." It is equally so to say that the people, as republics, are not above the constitution of government they have created, and elected their own subjects to operate or administer.

MARYLAND.

The Seventh to Ratify — Vote, 63 to 11 — Date, April 28, 1788. — When the convention of this state met, the federal plan had been before the people of the country, under close investigation and elucidating debate, for six months. Not only did the advocates everywhere explain the design to be "a confederation of the states," but "the people" could themselves see that the bodies-politic to which they all belonged, and to which they had ever yielded absolute obedience in all things, were associating themselves as such, and were named and recognized as absolute parties to the compact and actors under it. It was plain to Marylanders that Maryland was a republic, — that is, that she, as a commonwealth, had all original power, or, in other words, the absolute right of self-government; and, moreover, that no power was to be out of her but what was delegated, — that is, entrusted, for her use and behoof, to an agency. Moreover, the understanding had become general, that if the constitution should be adopted, there would soon be added the new safeguards to state integrity already proposed by Massachusetts.

"We, the People" of Maryland. — It was probably these consid-

erations and reflections that had made the thoughtful and prudent people of Maryland so ready to ratify. Determinedly self-governing, they reasoned for themselves, and many districts of them, having concluded the matter, sent deputies to the convention simply to ratify "the proposed constitution" "as speedily as possible," "and to do no other act." [II. Ell. Deb. 548.] And the convention voted down all attempts at delay and amendment — was only in session a few days — and ratified, by a vote of 63 to 11, in the following terms: "In convention of the delegates of the people of the state of Maryland, April 28, 1788. **We, the delegates of the people of Maryland,** having fully considered the constitution of the united states of America, reported to congress by the convention of deputies . . . held in Philadelphia, on the 17th day of September, 1787, of which the annexed is a copy, and submitted to us by a resolution of the general assembly of Maryland, in November session, 1787, **do, for ourselves, and in the name, and on the behalf of the people of this state, assent to, and ratify the said constitution.**" [I. Ell. Deb. 324.]

Luther Martin's Letter. — The most elaborate and instructive argument made against the new system was made by this great Marylander. He was her attorney-general, and a member of both federal and state conventions. His charges against the compact were mainly the same we have constantly seen. He feared lurking causes of danger in its various provisions, which, in later years, might emerge to destroy liberty, and he warmly urged its rejection. He would, he said, make every personal sacrifice, "if, on those terms only, he could procure his country to reject those *chains which are forged for it!*" However, the chains he inveighed against did not exist in the constitution. They were "forged" in the intellects of modern expounders, and foisted on the constitution in after years, the unfounded charges and arguments made by Martin, Henry, and others to defeat it, being the very materials from which, as we shall see, the sophistical "chains" were "forged." [For Martin's letter, see I. Ell. Deb. 344.]

The above sovereign act of Maryland was independent, absolute, and complete. It gave the federal constitution of government full force and effect in Maryland, according to the terms of it. Not a shade of life and power did it ever otherwise get. We have here, then, the seventh sovereign of the constituted league, — the seventh of the thirteen absolute constituents of the republic of republics.

CHAPTER VIII.

VIRGINIA FEDERALIZES HERSELF.

THE TENTH TO RATIFY — VOTE, 89 TO 79 — DATE, JUNE 25, 1788.

HER convention was an assembly of great men — all attached to the "Old Dominion" as to a mother; all determined to preserve intact her integrity, and her sovereign will over her interests and destiny; and all fearing a too powerful federal government, under which the sovereign rights of the states, and the liberties of the people, might be finally lost. The great, all-comprehensive idea of the constitutionists, and the convention was, that Virginia and her sister states were creating a federal system, to which they were to give, each a separate and independent sanction, and sufficient "delegation" of power for its purposes.

As in other states, the system was attacked from the fear that it was pregnant with the monster consolidation. Patrick Henry was the most active and denunciatory; but George Mason and others ably backed him. They assailed the very clauses as dangerous and treasonable to liberty and self-government, from which Dane, Webster, and Story have since deduced consolidation or national sovereignty. For instance, they attacked the phrase in the preamble — "We, the people of the United States, do ordain and establish this constitution" — as reducing states to subordination, and creating a national supremacy over them; the clause making the constitution, laws, and treaties "the supreme law of the land," as a specific abdication of sovereignty by the states to the nation; and the clause giving certain power over the militia, as giving the general government unlimited power and means to execute its will, — even over states. Other objections were made, but these were the main ones. They were all, in fact, misrepresentations, and were then and there fully exposed and refuted by Madison, Randolph, Pendleton, Marshall, Nicholas, Corbin, Innes, and others.

Virginia to remain a Sovereign. — EDMUND PENDLETON, the chancellor of the state, and the president of the convention, said, in reply to Henry, Mason, and others, "If the union of the states be necessary, government must be equally so." "The people are the fountain of

all power. They must, however, delegate it to agents, because . . . they cannot exercise it in person. . . . When *we* [the people of the state] were forming our state constitution, we were confined to local circumstances. In forming a government for the union, we [the same people] must consider *our* situation as connected with *our* neighboring states. . . . If *we* find it to *our* interest to be intimately connected with the other twelve *states*, to establish one common government, and bind in one ligament the strength of thirteen states, we shall find it necessary to delegate powers proportionate to that end; for the delegation of adequate powers in this government, is no less necessary than in our state governments. To whom do we delegate these powers? To our own representatives. Why should we fear greater dangers from *our* representatives there, than from those *we* have here? . . . Every branch [of government] is formed on the same principle, preserving throughout, the representative responsible character." [III. Ell. Deb. 298–9.] He makes an explicit assertion of state sovereignty in the union as follows: "The impossibility of calling *a sovereign state* before the jurisdiction of another sovereign state, shows the propriety and necessity of vesting this tribunal [the federal court] with the decision of controversies to which a state shall be a party." [Ibid. 549.]

James Madison had previously written in number 46 of the Federalist: "The federal and state governments are, in fact, but different agents and trustees of the people, instituted with different powers. . . . The ultimate authority — wherever the derivative may be found — resides in the people alone." And he explained in the Virginia convention, as well as in the Federalist, that it is "the people as composing *thirteen sovereignties*," who possess this ultimate authority, and "are parties to" the constitution. [III. Ell. Deb. 94.] In number 40 of the Federalist, he said, "The states were regarded as distinct and independent *sovereigns* . . . by the constitution proposed." See also number 39 for his full explanation.

James Innis, an able jurist and statesman, said, in the same convention, "After five months spent in tedious and painful investigation, they [the federal convention] with great difficulty devised the paper on the table. And it has been adopted by every *state* which has considered and discussed it. . . . Eight *states* have exercised their *sovereignty* in ratifying it. Let us try it. Experience is the best test. It will bear equally on all the *states*, from New Hampshire to Georgia. . . . I consider congress as ourselves, as our fellow-citizens, and no more different from us, than our delegates in the state legislature." [III. Ell. Deb. 636–7.]

John Marshall, the great jurist, afterwards for many years the distinguished chief justice of the federation, said, "When the govern-

ment is drawn from the people, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this government, thus depending on ourselves for its existence, I will rest my safety. . . . United we are strong — divided we fall." [III. Ell. Deb. 420.] "If you adopt it, what shall restrain you from amending it, if, in trying it, amendments shall be found necessary. The government is not supported by force, but depending upon our free will. When experience shall show us any inconvenience, we can correct it. . . . Let us try it, and keep our hands free to change it when necessary." In reference to the alleged fear that "congress may prostitute their powers to destroy our liberties," he said, "This goes to the destruction of all confidence in agents." And, referring to Virginia's right to "resume" her powers, if abused, he said, it is "a maxim that those who give may take away. It is the people that give power, and can take it back. What shall restrain them? They are the masters who give it, and of whom the servants hold it." Replying to Mr. Henry, as to the concurrent powers of taxation, he said: "It is an absurdity, says the worthy member, that the man should obey two masters, — that the same collector should gather taxes for the general government, and the state legislature. Are they not both the servants of the people? Are not congress and the state legislatures the agents of the people, and are they not to consult the good of the people?" [Ibid. 227, 233.] And while defending the federal jurisdiction of cases between a state and citizens of another state against the vehement attacks of Henry and Mason, he said he hoped that no one would "think that a state would be called at the bar of the federal court. . . . It is not rational to suppose that *the sovereign power* should be dragged before a court." [Ibid. 555.]

Gov. Randolph, Mr. Corbin, and the Messrs. Nicholas, all able statesmen, explained the new system substantially to the same effect. Said Randolph: "If you say that notwithstanding the most express restrictions, they [congress] may sacrifice the right of the states, then you establish another doctrine, — that the creature can destroy the creator, which is the most absurd and ridiculous of all doctrines." [Ibid. 363.] Indeed no advocate ever seemed to doubt that (as Madison stated) they were making "a government of a federal nature, consisting of many *co-equal sovereignties*." [Ibid. 381.]

"**Consolidation.**" — A few remarks and extracts on this subject may be instructive. The statesmen were then, as now, men of the people, speaking in common parlance alike on the hustings and in legislative debate. In making charges against the new system, one said, the government; another, the union; and a third, the states.

would be "consolidated" by it, — all meaning substantially the same thing, though "government," "union," and "states," are entirely different entities. It was the "states" that the system's defenders thought safe from "consolidation," while they really desired this "consolidation" for the "union;" that is to say, the making of it more solid, strong, and enduring, or, in other words, "a more perfect union" — to use the phrase of the preamble — than the previous one. And this is evidently what the convention meant, in the letter of Washington, written by their "unanimous order," reporting their plan to congress, by the expression: "We kept steadily in view . . . the consolidation of our union;" for the said convention had just framed Article VII. — the one characterizing the system, which declared that the constitution was to be established by, and "between the states, ratifying the same," through their respective conventions.

In fact, no one favored the consolidation of the states; but many feared and charged that the powers and means, and alleged supreme discretion of the new government, would enable it gradually to supplant the state governments, and degrade the states themselves to provinces or municipalities, subject to its imperial will.

Said Chancellor Pendleton, the president, in reply to Henry: . . . "But it is represented to be a consolidated government, . . . which so extensive a territory as the united states cannot admit of, without terminating in despotism. If this be such a government, I will confess, with my worthy friend, that it is inadmissible." . . . He then proceeded to show that it is not such a government, and cannot be changed to such a one. "It is," said he, "the interest of the federal to preserve the state governments. . . . Unless there be state legislatures to continue the existence of congress, and preserve order and peace among the inhabitants, this general government, which gentlemen suppose will annihilate the state governments, must itself be destroyed." [Ibid. 40.] Said Henry Lee, of Westmoreland, on the same occasion: "If this were a consolidated government, ought it not to be ratified by a majority of the people, as individuals, and not as states? Suppose Virginia, Connecticut, Massachusetts, and Pennsylvania had ratified it; these four states, being a majority of the people of America, would, by their adoption, have made it binding on all the states, had this been a consolidated government. But it is only the government of those seven states who have adopted it. If the honorable gentleman [Mr. Henry] will attend to this, we shall hear no more of consolidation." [Ibid. 180.]

Madison expressed the same views [Ibid. 94, 96; Federalist, Art. 39], so with the Messrs. Nicholas, Gov. Randolph, and others; but as no friend of the system dissented, further quotation is unnecessary.

What Virginia meant by "we, the People." — CHANCELLOR PENDLETON said: "This constitution was transmitted to congress by that convention; by the congress transmitted to the legislature; by them recommended to THE PEOPLE. The people have sent *us* hither to determine whether this government be a proper one or not." [III. Ell. Deb. 6.] Was this "the people" of the united states? The reply of HENRY LEE, of Westmoreland, to Patrick Henry, is instructive and decisive. The latter had demanded: "Who authorized them [the convention] to speak the language of *we, the people*, instead of *we, the states?* States are the characteristics and the soul of a confederation. If the states be not the agents [actors] of this compact, it must be one great, consolidated, national government, of the people of all the states." [Ibid. 22.] Said Lee in reply: "This system is submitted to *the people* for their consideration, because on them it is to operate, if adopted. It is not binding on *the people* until it becomes *their* act. It is now submitted to *the people of Virginia*. If *we* do not adopt it, it will always be null and void as to *us*." [Ibid. 42.]

GEORGE NICHOLAS said, the time is come when "*this state* is to decide this important question of rejecting or receiving this plan of government." [Ibid. 7.] GOV. RANDOLPH said: "Were I convinced that the accession of eight states did not render *our* accession also necessary to preserve the union, I would not accede till it should be amended." [Ibid. 67.] ZACHARIAH JOHNSON said, "the great and wise *state* of Massachusetts has taken this step; the *state* of Virginia might safely do the same." [Ibid. 649.] MR. STEPHEN said, "*we* are about to determine whether *we* shall be *one* of the *united states* or not." [Ibid. 644.] JAMES INNES said, "eight *states* have exercised their sovereignty in ratifying it. . . . Let *us* try it. Experience is the best test." [Ibid. 636–7.] JOHN MARSHALL, as we have seen, called the state "the sovereign power." [III. Ibid. 535.] And JAMES MADISON said, "*each state*, in ratifying the constitution, is considered as *a sovereign body*," and "no *state* is bound by it without *its own consent*." [III. Ibid. 94; Fed. No. 39.]

But enough has been quoted, the arguments of the constitutionists being all to the same purpose. The contest was long and animated. The enemies, by the false ascriptions that in subsequent years were made so attractive by the logic and eloquence of a Webster, though overwhelmingly beaten in argument, were barely overcome in voting, — the majority for ratification being only 10 in a house of 168. The enacting words of the ordinance are as follows: "**We, the delegates of the people of Virginia**, duly elected, . . . and now met in convention, . . . **in the name and behalf of the people of Virginia, do, by these presents, assent to, and ratify the constitution,**

recommended on the 17th day of September, 1787, by the federal convention, for the government of the united states, hereby announcing to all those whom it may concern, that *the said constitution* is binding upon *the said people*, according to an authentic copy hereto annexed. Done in convention this 26th day of June, 1788."

"The said constitution" then, and by that act, became "binding upon the said *people" of Virginia.* She then, by her own peculiar and exclusive will, gave that constitution of government all the life and jurisdiction it ever had or could have in Virginia. Nothing could be plainer. Now, is it not incredible that the statesmen, judges, and historians, of the Massachusetts school, should ignore or suppress the sovereign act of Virginia (and the similar one of Massachusetts), and assert that the nation made the constitution, and that it was not made by the people of the several states? They also ignore or suppress the all-important fact, that the thirteen states were, at that moment, under a solemn compact — all with each and each with all — that "each state retains its *sovereignty*, freedom, and independence," and hence that they did not and could not act otherwise than as sovereigns, and that no aggregate people did or could exist, with authority to put a general constitution in force in and over one of these states. If thirteen sovereign states did, a sovereign nation did not, then exist. If the former did then dispense power, the latter did not.

Making Assurance doubly sure. — Furthermore, Virginia, in her absolutely sovereign action by convention, aiming to guard against those dangers to her integrity, which Massachusetts had been so careful to forefend, and which she herself was so earnestly premonished of, seconded the demand of Massachusetts on the states for amendments, as New Hampshire simultaneously did, — the main one being "that *each state* shall respectively retain every power, jurisdiction, and right, which is not, by this constitution, delegated to the united states." This, somewhat modified in language, though not in import, was afterwards adopted by the states. Again, the convention, speaking with direct reference to federal functionaries, declared "that all power is invested in, and derived from, *the people;* and that magistrates are, therefore, *their* trustees and agents, at all times amenable to *them.*" And, finally, she embodied in the ordinance of ratification, still speaking for herself, the following declaration: "That the powers granted under the constitution, being derived from *the people* of the united *states* [may] be *resumed* by them, whenever the same shall be perverted to their injury or oppression." [I. Ell. Deb. 327.]

Her ideas were, in short, that all power is in the people; the people are states; each state retains all she does not delegate; all mag-

istrates are their trustees and agents; and the people that delegate powers may withdraw them. These truths are fundamental and sacred; they are in all bills of rights; they are state sovereignty, and only mendacity itself can unblushingly deny them!

The last above quoted passage, Judge Story, in his "Commentaries," uses as a leading proof that these "powers" are "derived from the people" as a nation, when, as he knew, every word and action of Virginia contradicts it; and the passage itself is susceptible of no such interpretation, — the assertion being, as the fact is, that the "powers" are "derived from the people of the . . . states." All the states — including Oregon, Maine, Texas, Alaska, Greenland, and Patagonia — "*resuming*" — or "*reassuming*," as New York has it — "the powers" delegated by Virginia, is a solecism, which would be amusing were it not a subject of deep regret.

Such perversions are hardly entitled to respectful exposure; but let us plod patiently on. Look at the ludicrous position and silly act these Massachusetts philosophers attribute to Virginia, as well as to their own state. In this trying and solemn hour, when high debate was raging, and all hearts were fervently wishing to secure her "pearl of great price," — sovereignty, and the freedom of her children, and her children's children, against consolidation and arbitrary power, Virginia, by her great statesmen and lawyers — "and there were giants in those days" — forgot herself, and her simultaneous sovereign act, and declared that the nation gave, and could take away, the powers granted. While denying and guarding against it, she confessed an outside sovereignty that destroyed her. While engaged in preserving her political life, she committed the most inconsistent and remarkable suicide in history!

Now let us conclude the case of Virginia, by contemplating for a moment the conduct of Massachusetts towards her, as it will appear in the pages of our Gibbon, — if she be sponsor for her misteaching sons, and fail to lead, in restoring the commonwealths to their old *status* and supremacy. Both foreboded the same dangers. They asserted, acted with, and secured their sovereignty in the same mode, — the latter leading the way. They pledged solemn faith for mutual protection, declaring and guaranteeing each other to be "sovereign, free, and independent."

Virginia kept the faith! She was incapable of doing otherwise. But Massachusetts, to promote selfish ends, became the Peter the Hermit of a new crusade. She perverted the faith and the solemn compacts of the fathers, inflamed the North to hunger and thirst for Southern carnage and blood, and finally led an overwhelming host to dragoon the South into submission, and to darken her sunny landscapes with

desolation and mourning. "The land was as the garden of Eden before her, and behind her, a desolate wilderness!" Yes; she issued forth from her own unassailed and unbroken walls, which shielded her own plenty and peace, and, like a demon of destruction, razed Virginia's citadel to the earth, and drove the ploughshare of ruin through all its foundations!

CHAPTER IX.

SOUTH CAROLINA AND GEORGIA FEDERALIZE THEMSELVES.

IN South Carolina, the new system was strongly opposed, and much discussed, while in Georgia, the accession was ready and unreluctant. Let us take first the case of

SOUTH CAROLINA.

The Eighth to Ratify — Vote, 149 to 73 — date, May 23, 1783. — Not less decisively speaks the record of this state. All her sons were opposed to any interference with state sovereignty, — the enemies of the new system charging danger, and the friends declaring the fear to be groundless. Rawlins Lowndes was the leading opponent. So earnest was he, that, seeming to look forward to the lost liberties of his state, to justify his opposition and prove his words of warning true, he wished his epitaph to be: "Here lies the man that opposed the constitution, because it was ruinous to the liberty of America." Were he, Patrick Henry, Luther Martin, and the other opponents, wiser than the rest of the fathers? Did they really find the defects and dangers they charged? Or did they fear the alleged propensities of the Northern people, and the perversions of their expounding statesmen?

The leading constitutionists were Charles Pinckney, General C. C. Pinckney, John Rutledge, Pierce Butler, Edward Rutledge, J. J. Pringle, and others. They encountered and overthrew the same kind of opposition, which, as we have seen, was rife in the other states. The discussion took place both in the legislature and the convention.

The Explanation of the System to her. — CHARLES PINCKNEY, a member of both federal and state conventions, and one of her most distinguished statesmen, said that "all power of right belongs to the people; that it flows immediately from them, and is delegated to their officers for the public good; that our rulers are the servants of the people, created for their use, and amenable to their will." [IV. Ell. Deb. 319.] A "distinguishing feature in our union," said he, "is its

division into individual states, differing in extent of territory, manners, population, and products." [Ibid. 323.]

He further said, the condition of inter-state and foreign commerce made necessary "some general and permanent system, which should at once embrace all interests, and, by placing the *states* on firm and united ground, enable *them* effectually to assert *their* [not the nation's] commercial rights." [Ibid. 254.] He said further, there is an authority "absolute and uncontrollable," "from which there is no appeal," — "the sovereign or supreme power of the state;" and that "with us the sovereignty of the union is with the people" [Ibid. 327], meaning, with Madison, *the people of the states* whose creation the government was to be, and who were then delegating "powers" to the said creation. For example, he said "*the states* ought not to *entrust* important rights" to one legislative house, and that, therefore, the convention thought it "their duty to divide the legislature into two branches, and, by a limited revisionary power, to mingle in some degree the executive in their proceedings." [Ibid. 256.]

Furthermore, he cited approvingly the contention of the small states in the federal convention, "that as *the states* were the pillars upon which the general constitution must ever rest, their state governments must ever remain; that however they may vary in point of territory or population, as political associations they were equal." [Ibid. 256.]

And, finally, he characterized the new system as "a federal republic," and said: "To what limits such a republic might extend, or how far it is capable of uniting the liberty of a small commonwealth with the safety of a peaceful empire; or whether, among *co-ordinate powers*, dissensions and jealousies would not arise, which, for *want of a common superior*, might proceed to fatal extremities, are questions upon which he did not recollect the example of any nation to authorize us to decide, because the experiment has never yet been fairly made. *We are now about to make it upon an extensive scale*, and under circumstances so promising that he considered it the fairest experiment that had ever been made in favor of human nature." [Ibid. 262.] It is beyond question, then, that Charles Pinckney considered the states as "co-ordinate powers," having no "common superior." No "nation of people," distributing *their* powers between *their* general government and *their* several state governments was known to him!

General C. C. Pinckney, a member of both conventions, afterwards in several high offices, and finally the federal party's candidate for the presidency, said, near the close of the federal convention, after the character of the new constitution had been agreed on, to wit, on September 3, 1787: "The first legislature will be composed of the

ablest men to be found. The states will select such to put the government into operation." [V. Ell. Deb. 506.] He here recognized what the constitution did, viz., that the states, as parties to and actors in the new system, were to govern themselves; that is to say, they — being republics — were, of original right, to elect senators, representatives, and president, who, as agents of the said states, were, with such functionaries as they should provide for and appoint, to govern, using the "powers" "*delegated*" or *entrusted* to them for that purpose by the said states — the said senators to be elected by the respective legislatures of the states, and the representatives and president, *pro tanto*, by the respective peoples thereof. This is precisely our system, — a union of self-governing states. Another remark of General Pinckney in the federal convention is apposite. Mr. Martin moved to vary the article relating to the importation of certain persons, so as to allow a prohibition or tax. Mr. Ellsworth remarked that "*the states* were the best judges of their particular interest. The *old confederation* had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the *new one*." Mr. Charles Pinckney said if this is done "South Carolina can never receive the plan." General Pinckney said it would be unjust "to require South Carolina and Georgia to *confederate* on such unequal terms." [V. Ell. Deb. 456, *et seq.*] We find, then, that he thought — after the federal plan had been decided on, to wit, on the 26th of August, 1787 — that South Carolina and Georgia were "to *confederate*" with the other states on "terms."

Let us now see what he afterwards said in the legislature of South Carolina. He stated the objects of the federal convention to be "to strengthen the union," and "give greater powers to the federal government." To the charge that the federal convention had exceeded its powers, he replied that "the present constitution is but a proposition, which the people may reject;" but he "conjured them to reflect seriously before they did reject it, as he did not think our *state* would obtain better terms by another convention." *Terms of union between states*, again! Said he further: "The delegations of Jersey and Delaware . . . acquiesced in it;" and so satisfied are "the people of those *states*, that their respective conventions have unanimously adopted the constitution." [IV. Ell. Deb. 282.]

His idea that communities as such, and not the aggregate people of them, were the constituents of the union, is indicated in all the above extracts, but more notably in the following: "The Southern *states* are weak; . . . we are so weak by ourselves, we could not form a union strong enough for effectually protecting each other. Without union with the other *states*, South Carolina must soon fall. . . .

Should we not endeavor to form a close union with the Eastern *states*, who are strong? . . . If our government is to be founded on equal compact, what inducement can *they* possibly have to be *united* with *us*, if we do not grant them some privileges with regard to their shipping? Or, supposing they were to unite with us without having these privileges, can we flatter ourselves that such union would be lasting?" [Ibid. 283–4.] Again: "We do not enter into treaties as separate states, but as united states; and all the *members* of the union are answerable for the breach of treaty by any one of them." [Ibid. 279.]

The following is decisive proof of General Pinckney's belief that the states, as political communities, were sovereign, and acted as such in forming the union: "It is admitted on all hands that the general government has no powers but what are expressly granted by the constitution, and that all rights not expressed, were reserved by the several *states*." [Ibid. 286.] The same principle is repeated as follows: "The general government has no powers but what are expressly granted to it; therefore it has no power to take away the liberty of the press; . . . by delegating express powers, *we* certainly reserve to *ourselves* every power and right not mentioned in the constitution." [Ibid. 315.] See also p. 10 *supra*.

These passages, from the indelible record, show that General Pinckney regarded the constitution as "a compact" between states; the system provided for, as a union or "confederation" of states, and the states themselves, as the sovereign delegators and reservers of power. He knew the people, as states, to be acting with entire voluntariness, and, as separate sovereigns, ratifying what they, as collective sovereigns, had framed.

But the perverters, to support their false theory that a sovereign nation made the union, have culled, from the very midst of the above expressions, the statement of General Pinckney that the Declaration of Independence proves that "there never was any individual sovereignty of the several states." [Ibid. 301.] In a future chapter, I shall show that General Pinckney probably referred to the government incorporated in the state constitution, as the state, for this to the most of people was the only visible embodiment of the idea of a state; it acted in every manner of state action; and, in common parlance, it was called the state, and was accredited with sovereignty, particularly by the functionaries of it; while in reality it was a mere agency, the sovereignty, or right of government, residing permanently in the society of people. If he did not mean as I indicate, he was, first, "blowing hot and cold with the same mouth;" second, speaking absurdly, for the states, as political bodies, occupied the whole ter-

ritory, and included and controlled all the people; and they were then placing over the said people, absolutely, their new "supreme law;" third, mendacious, for the states had then a solemn league and covenant, declaring and guaranteeing that "each state retains her sovereignty;" and not only was George III. required by the American commissioners to "acknowledge" on this basis, as he did, but the fathers themselves, in establishing the new plan, acted upon it, as they were compelled to do, being citizens and subjects of such sovereignties; fourth, traitorous, for, while assuring his sovereign that the new plan was *her* "compact," *her* "confederation," *her* "supreme law," he was, Judas-like, aiming to place her under a yoke!

JOHN RUTLEDGE, a member of both federal and ratifying conventions, and afterwards chief justice of the union, referring to a remark of Mr. Lowndes, said that, instead of "the sun of the country being obscured by the new constitution, . . . the sun of this state, united with twelve other suns, would exhibit a meridian radiance astonishing to the world." [Ibid. 312.] He said, in the federal convention, in reference to the proposal to give congress the power to negative all state laws, it might think interfered "with the general interests and harmony of the union: "If nothing else, this alone would damn, and ought to damn, the constitution. Will any state ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle." [V. Ell. Deb. 368.]

HON. J. J. PRINGLE, attorney-general, said the treaties "will affect the individuals equally of all the *states*. If the president and senate make such as violate the fundamental laws, and subvert the constitution, or tend to the destruction of the happiness and liberty of the *states*, the evils . . . will be removed as soon as felt, as *those who are oppressed have the power and means of redress*;" that is to say, the states are absolute, and have the control of the powers they delegate, and the unlimited right of self-defence. [Ibid. 270.]

HON. EDWARD RUTLEDGE, a signer of the Declaration of Independence, and one of the governors of the state, said, in the legislature: "But the gentleman [Mr. Lowndes] has said that there were points in *this new confederation* which would endanger the rights of the people." He then proceeded to speak of the states as the parties to and the actors in "this new confederation;" and the functionaries thereof, as representatives acting with a "trust." [Ibid. 276.]

"We, the People" of South Carolina. — The principal debate, which is preserved, took place in the legislature, which finally resolved, unanimously, "that a convention of the people should be called for

the purpose of considering, and *ratifying* or *rejecting*, the constitution framed for the united states." [Ibid. 316.]

Alexander Tweed said: "The constitution now lies before us, to wait our *concurrence* or *disapprobation*. We, sir, as citizens and freemen, have an undoubted right of judging for ourselves." [Ibid. 333.]

Hon. Jacob Read "urged a concurrence with those *states* which were in favor of the new constitution." [Ibid. 286.]

Charles Pinckney said: "We are called upon to execute an important trust, — to examine the principles of the constitution now before you, and, in the name of the people, to *receive* or *reject* it." [Ibid. 332.]

But enough has been quoted; for there was not a word of dissent, in either the legislature or the convention, on the part of any friend of the new system. Friend and foe alike deprecated the principles since advocated by the Massachusetts school, — if dogmas so unprincipled can be called principles at all.

The convention finally ratified the constitution by a vote of 149 to 73, the substantial words of the ordinance being as follows: "**In convention of the people of the state of South Carolina**, by their representatives, held in the city of Charleston. . . . **The convention**, having maturely considered the constitution or form of government reported to congress by the convention of delegates, . . . and submitted to them by a resolution of the legislature, . . . in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty, . . . **do, in the name and behalf of the people of this state, hereby assent to and ratify the said constitution**. Done in convention, the 23d day of May, A.D. 1788." [I. Ell. Deb. 325.]

Here we see that, by this act of ratification, South Carolina established the constitution within her territory, and subjected her citizens to its operation, thus giving its functionaries their only jurisdiction. As this jurisdiction flows solely from the constitution, and is subject to it, it is necessarily subject to the will that established it. There was no sign or hint of any other will, — certainly none of a national will. Nay, more, if the existence and binding force of the said constitution, as the supreme law of South Carolina, were ever called in question, the only possible proof of the same would be the above act of ratification, with the constitution annexed. How absurd, then, it is to say that South Carolina was not to be and remain a sovereign in the union.

This state also joined Massachusetts in demanding amendments for the more complete security of state integrity and sovereignty, par-

ticularly the one declaring that "THE STATES RETAIN every power not expressly . . . vested in the general government." [I. Ell. Deb. 325.]

Not one word of support is there in the records of this state for the assertions of Dane, Story, Webster, and Curtis! They are contradicted in the most direct and positive manner!

GEORGIA.

The Fourth to ratify —Vote, unanimous — date, Jan. 2, 1788. — There was little or no opposition in this state, and no demand for amendments. Her convention, being called to consider the proposed plan, and the accompanying letter and resolutions, "and to adopt or reject any part or the whole thereof" [Ibid. 323], unanimously ratified the constitution, the substance of her ordinance being as follows: "Now know ye that **we, the delegates of the people of the state of Georgia, in convention met,** pursuant to the provisions of the legislature aforesaid, having taken into our serious consideration the said constitution, . . . **by these presents do,** in virtue of the powers and authority given us by the people of the said state for that purpose, for and in behalf of ourselves and our constituents, fully and entirely **assent to, ratify, and adopt the said constitution.** Done in convention, at Augusta, in the said state, on the 2d day of January, A.D. 1788." [Ibid. 323.]

As to Georgia, the constitution of government was completed by this act; and it was done solely "in virtue of the powers and authority" "given by the people of the said state," and not by the people of any nation. This alike shows that the phrase "we, the people," meant Georgia, and destroys the whole theory of the Massachusetts school.

CHAPTER X.

NEW HAMPSHIRE FEDERALIZES HERSELF.

THE NINTH TO RATIFY — VOTE, 57 TO 46 — DATE, JUNE 21, 1788.

THIS state, being the ninth to ratify, made the complement required for the establishment of the constitution; for Article VII. declared that "the ratification of the conventions of *nine states* shall be sufficient for the establishment of this constitution, *between the states* so [*i. e.* by conventions] ratifying the same." Nine successive acts of ratification, then — *i. e.* the acts of nine separate wills, each operating voluntarily, and with a perfect right to ratify or reject — were to establish and complete the constitution. No single act, movement or exercise of will could, by any possibility, have done it; and the record throughout exhibits the action of nine independent wills, and no sign of a single and exclusive one. "*The people*" were organized as *states*, and the *states* were "*the people*." As bodies-politic, composed of people, they, and they alone, ratified. The idea of their unity of organization, will, and deed, as a nation, is entirely false. Article VII. shows that ratifications were to establish; that states were to ordain the ratifications; and, therefore, that the states were to "ordain and establish this constitution for the united [*i. e.* associated] states of America."

New Hampshire's Assertion of her Statehood. — She was a republic, — that is, a community with the absolute right of self-government; and there was no sign of any authority above her. The record shows that she acted solely of her own motion; and at that moment, the solemn covenant called the articles of confederation, bound all the states to the recognition of her sovereignty, for their declaration was, that "each state retains her *sovereignty*, freedom and independence." [Article II.] Necessarily she was exercising this sovereignty in making the new constitution. She acted as a commonwealth exclusively, and no power on earth constrained or influenced her. All the fathers asserted or took for granted, that the states were acting in this sovereign capacity. Moreover, the people of New Hampshire had, in 1784, by social compact, "formed themselves" — to use their own words — "into a free, *sovereign* and independent body-politic, or state,

by the name of the state of New Hampshire." [Const. N. H., Part II., Art. I.] This is the character by which she passed, by name, into the union [Fed. Const., Art. I., § 2], and her reiteration of it in 1792, several years after the constitution was established, proves that she considered herself sovereign in the union. And, indeed, this self-description stands to the present day, as does the following remarkable declaration: "*The people* of this state have the sole and *exclusive right* of governing themselves as a free, *sovereign* and independent *state;* and do, and forever hereafter shall, exercise and enjoy every power . . . which is not, and may not hereafter be, *by them*, expressly *delegated* to the united *states* in congress assembled." [Const. N. H., Bill of Rights, Art. VII.] And, apparently for the sake of greater emphasis, she declares that her people have the right, whenever they deem it necessary to prevent the ends of government from being perverted, or to preserve public liberty, "to reform the old, or establish a new government;" and that "all magistrates and officers of government" are her people's "*substitutes and agents*, and at all times accountable to them." [Ibid., Arts. VIII–X.]

Here we have her self-assertion. No sovereign of Europe could be more autocratic, and her ratification was precisely in character. Let us see.

"We, the people" of New Hampshire. — Her convention was called to examine, and to ratify, or reject, the constitution proposed. It was most deliberate in action, adjourning at one time for several months. But for this adjournment, and the timely supervention of a general understanding in regard to conservative amendments, as well as the favorable action and influence of other states, the constitution would have been probably rejected. As it was, she ratified by a vote of 57 to 46, — the substantial words of her ordinance being as follows: "In convention of the delegates of the people of the *state* of New Hampshire, June the 21st, 1788. **The convention**, having impartially discussed and fully considered the constitution for the united states of America, reported to congress by the convention, . . . and submitted to us by a resolution of the general court of said state, . . . **do, in the name and behalf of the people of the state of New Hampshire, assent to, and ratify the said constitution** for the united states of America." [I. Ell. Deb. 325.]

The convention coupled with the ratification the following, which, with other proposed amendments, it declared to be indispensable "to quiet the apprehensions" of the people and "to guard against an undue administration of the federal government:" "That it be explicitly declared, that all powers not expressly and particularly delegated by the aforesaid constitution, are reserved to the several states, to be by them exercised."

It is hard to discover any ground for doubt and fear. But all the promising appearances, all the prospective safeguards, and all the arguments and assurances of the constitutionists, could only "quiet the apprehensions" to a sufficient extent to give the meagre majority of 11 in a vote of 103. Suppose Mr. Webster, who was a native of New Hampshire, though adoptively of Massachusetts, had, in those days, appeared before her — even in the prime of his greatness — and "expounded" the constitution, as he did forty or fifty years later, to mean that a great and undivided nation were, in and by that constitution, "distributing *their* powers between *their* general government and their several state governments," and that New Hampshire was only to hold and wield what the said nation "reserved" in the said constitution, to her, as the county, province, department, pashalic, satrapy, municipality, division or state of New Hampshire; suppose, I say, these absurd and unprincipled notions, which the Massachusetts school profess to have believed for the last thirty or forty years, had been stated by Webster to New Hampshire, as the meaning of the constitution, would she not with unanimity have spurned it from her borders, and disowned the son who insulted her by proposing such degradation. In truth, nobody dared to advocate such ideas in those days. They appeared *as charges to defeat the system*, and they well nigh accomplished the purpose.[1]

Nine Parties "established" the Compact. — The seventh, last and characterizing article of the constitution provides that nine ratifications "shall be sufficient for the *establishment* of this constitution between *the states* so ratifying;" so that when Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina, and New Hampshire, had ratified, it was understood by everybody that while, without nine, the ordinances were nugatory, with that number they were effective; the compact was "established," and the federation complete, even if no more states ratified.

The following from the "Massachusetts Centinel" of June 25, 1788, shows the impressions and ideas of that day, viz., that "the states" (to use Hamilton's phrase, heretofore quoted) are the "essential component parts of the union," — the pillars upon which the federal superstructure solely rests; that the constitution was "established" and complete when the ninth state ratified; that it was established "between the states," as political bodies of people; and that these were necessarily "the people of the united states:"

"We felicitate our readers on the accession to the confederation of

[1] It should, perhaps, be noted here that in March, 1788, the New Hampshire convention stood 54 to 50 in favor of rejecting the constitution; and that only adjournment for three months, with the growing confidence that the new safeguards of freedom proposed by Massachusetts, South Carolina, and others, would prevail, saved it. See extract from Va. Gazette, Appendix A., No. 2.

the *state* of New Hampshire, not only because it completes the number of *states* necessary for the establishment of the constitution, but because it is a frontier, a neighboring, and, to us, really a sister state. It is now one of the noble pillars of the great national dome."

We find New Hampshire, then, to be the ninth absolute sovereign; and **the federation of states, or the "republic of republics," to be completely established by the ratifications of the nine states,** which are named and provided for in the constitution, as distinct political bodies, and as parties to, and actors under it.

The Putting of the Agency at work. — After the states had thus established the constitution as their frame of general government, and "supreme law," their general agency, congress, proceeded to put the great machine in operation. The following quotations will bring vividly to us the ideas of that day.

It should be premised that the federal convention always recognized the political bodies called states, as the sole potential actors in the framing and establishing of the constitution, and considered themselves as the citizens, subjects, representatives, agents and servants of the said states, with only advisory powers. The idea of the fathers unquestionably was, that the new government was not to operate on the political bodies that were making it, but on their citizens, by their authority — the new arrangement being the self-government of the states, on matters common to them; that is to say, the government, by themselves, of their citizens, through the instrumentality of a general governmental agency. It should also be mentioned that the federal convention, in their letter reporting their plan to congress, unanimously said the new system was "the *federal* government of these states," and that it was the "*delegating*" of an "extensive trust." The following is from the record of the convention.

"In convention, Monday, Sept. 17, 1787. Present: *The states* of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton, from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia. . . . Resolved, That it is the opinion of this convention that as soon as the conventions of *nine states* shall have ratified this constitution, the united *states*, in congress assembled, should fix a day on which electors should be appointed by the *states* which shall have ratified the same; and a day on which the electors should assemble to vote for the president; and the time and place for commencing proceedings under the constitution. That after such publication, the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed and directed, as the constitution

required, to the secretary of the united states in congress assembled; that the senators and representatives should convene at the time and place assigned; that the senate should appoint a president of the senate, for the sole purpose of receiving, opening and counting the votes for the president; and that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution. By unanimous order of the convention. George Washington, President." [I. Ell. Deb. 16.]

The reader will please note, *en passant*, that here, and in the constitution, are positive proof that the convention unanimously asserted that the *states*, as bodies, were to ratify and establish the constitution [see the preamble and Article VII.]; that the *states*, through electors, were to appoint the president [Art. II. § 1]; that the *states* were to elect the senators and representatives [Article I., §§ 2, 3]; and that this "congress" of the delegations of the *states*, "together with the president," were "to execute this constitution" of the said *states*. Here is a decisive proof of the untruth of the Massachusetts school in saying that "the people," as a nation and not as states, established and put in effect the constitution.

The Action of Congress. — Now let us see what action *the congress of the states* took when the ninth state had ratified. I copy, from the Worcester [Massachusetts] Spy of July 17, 1788, its report from the journal of congress, — my purpose being alike to reproduce the sacred record, and the impression made upon the people of that day:

"In congress, July 2, 1788. The *state* of New Hampshire having ratified the constitution, . . . and transmitted to congress the ratification, . . . the president reminded congress that this was the ninth ratification transmitted and laid before them; whereupon . . . ordered, that the ratifications . . . be referred to a committee, to examine the same, and report an act for putting the said constitution into operation, in pursuance of the resolutions of the late federal convention." [See also the Journal of Congress, and I. Ell. Deb. 332.]

The said committee on the 14th of July, 1788, reported an act for putting the constitution into operation, which was debated till the 13th of September, when congress — two more *states* having meanwhile ratified — resolved that, as **"the constitution . . . has been ratified in the manner therein declared to be sufficient for the establishment of the same**; and such ratifications, duly authenticated, have been received by congress, and are filed in the office of the secretary, . . . the first Wednesday in January next be the day for appointing electors in *the several states*, which, before the said day, *shall have ratified* the said constitution; that the first Wednesday in February next be the day for the electors to assemble in their respec-

tive states, and vote for a president; and that the first Wednesday in March next be the time, and the present seat of congress the place, for commencing proceedings under the said constitution." [Ibid. 333.]

Conformably to this, *their* resolve, and to *their* provisions in *their* constitution [Art. II., § 1; Art. I., §§ 2, 3], *the states* proceeded to "appoint electors," and to elect *their* senators and representatives to congress. And, on the 4th of March, 1789, proceedings were commenced; and Washington having been unaminously elected president, "the congress, together with the president," did, as the convention advised, "proceed to execute" "the constitution of [*i. e.* belonging to] the united [or associated] *states.*"

It is plain, then, that "the people of the united states," as commonwealths — they being thus respectively organized by social compact — did "ordain and establish," and "proceed to execute," "this constitution for the united *states* of America." Thus they have chosen to govern themselves in federal matters. And liberty is obviously at an end, if they, as self-organized, are not superior to the agency they, in self-government, create. The Massachusetts school seem to forget that the states were republics, and that, to remain so, they must retain the right of self-government — not in part, but wholly; and that this intact *right of self-government is their sovereignty*, and is the very thing that makes them states, and not provinces or municipalities. In their character as sovereign states they acted; and only a federation was possible, unless there had been self-extinction, or self-degradation to provinces or counties, of which American history gives no shadow of evidence. The "nation" of the Massachusetts school, as well as the second social compact forming such nation, are mere figments. It seems to be ignored by some of the members of that school, that the time is past, when intelligent men, and especially those who have investigated the history of the constitution, can innocently and creditably reaffirm the dogmas of Story and Webster on matters of constitutional or federal history and exposition, especially in regard to the nature and character of our general polity.

CHAPTER XI.

NORTH CAROLINA FEDERALIZES HERSELF.

THE TWELFTH TO RATIFY — REJECTION, AUG. 1, 1788, BY 188 TO 88 — ADOPTION, NOV. 21, 1789, BY 193 TO 75.

THIS state, which rejected the constitution at first, but accepted it after she felt assured of satisfactory amendments, most completely demonstrated the sovereign self-will of the American commonwealths, and the absurdity of the idea that any national controlling power existed.

All these states (the people of which must have constituted the sovereign nation, if there was one) joined in declaring that the commonwealth called North Carolina "retained its sovereignty," and this solemn treaty-recognition of the great fact was in full force, and she acted up to it, in the time and deed of determining her will, as to ratifying or rejecting the new federal plan. No one in all the land pretended to question her right to reject, and remain forever as independent as Russia or France! The assertion, then, that a sovereign nation existed, controlling the states into association, is obviously a sheer fabrication.

Her Idea of the Union. — But as North Carolina only awaited amendments, and did, when she felt sure of them, ratify the constitution, we may profitably quote the explanations of her chief statesmen, to get her idea of the new system.

JAMES IREDELL, a distinguished jurist and statesman, afterwards on the supreme bench of the union, said in opposition to the dogma that "a government is a compact between the rulers and the people:" "This is held to be the principle of some monarchial governments in Europe. Our government is founded on much nobler principles. The people are known with certainty to have originated it themselves. Those in power are their servants and agents; and the people, without their consent, may new model their government whenever they think proper, not merely because it is oppressively exercised, but because they think another form will be more conducive to their welfare. It is upon the footing of this very principle that we are now met to consider of the constitution before us." [IV. Ell. Deb. 9.] In refer-

ence to the federal senate, he said it was necessary to vest "this [the treaty-making] power in some body composed of representatives of states, where their voices should be equal; for, in this case, the sovereignty of the states is particularly concerned, and the great caution of giving the states an equality of suffrage in making treaties, was for the express purpose of taking care of that sovereignty, and attending to their interests, as political bodies, in foreign negotiations." [Ibid. 125.] He said, further, "the senate is placed there for a very valuable purpose — as a guard against any attempt of consolidation," and "to preserve completely the sovereignty of the states." [Ibid. 133.]

William R. Davie, one of the ablest statesmen produced by North Carolina, a member of both federal and state conventions, and afterwards in several distinguished positions, said, in the state convention, "If there were any seeds in this constitution which might one day produce consolidation, it would, sir, with me, be an insuperable objection, I am so perfectly convinced that so extensive a country as this, can never be managed by one consolidated government. The federal committee were as well convinced as the members of this house, that the state governments were absolutely necessary to the existence of the federal government. They considered them as the great massy pillars on which this political fabric was to be extended and supported; and were fully persuaded that when they were removed, or should moulder down by time, the general government must tumble into ruin." [Ibid. 58.] Further along in the debate, in reference to the proper lodgment of the treaty-making power, he said: "As the senate represents the *sovereignty* of the states, whatever might affect the states in their political capacity, ought to be left to them. This is the certain means of preventing a consolidation." [Ibid. 123.] In this connection he mentions the most important and instructive fact, "that the extreme jealousy of the little states, and between the commercial states and the non-importing states, produced [in the federal convention] the necessity of giving an equality of suffrage to the senate. The same causes made it indispensable to give to the senators, as representatives of states, the power of making, or, rather, ratifying, treaties; . . . the small states would not consent to *confederate* without an equal voice in the formation of treaties. . . . Every man was convinced of the inflexibility of the little states on this point. It, therefore, became necessary to give them an absolute equality in making treaties." [Ibid. 120.] This is like the statement that Charles Pinckney made in the convention of South Carolina. He said the smaller states, in the federal convention, declared that "they formerly confederated" as equal "political associations," and that "no inducement whatsoever should tempt them to unite upon other terms."

[Ibid. 256.] Mr. Davie further said that North Carolina's insisting upon amendments before ratification, was an "attempt to dictate to one of the most powerful confederacies in the world" while "we" are "no part of that *confederacy*." "Four of the most respectable states," continued he, "have adopted that constitution, and recommended amendments. New York [if she refuses to adopt], Rhode Island and North Carolina will be the only states out of the union. But if these three were added, they would compose a majority in favor of amendments. . . . Two-thirds of the legislatures of the states in the *confederacy*, may require congress to call a convention to propose amendments. . . . Without adoption, we are not a member of the *confederacy*, and, possessing no federal rights, can neither make any proposition, nor require congress to call a convention." [Ibid. 236.]

Archibald Maclaine, one of the ablest advocates of the federal system, said, in the same convention, in reference to the general and local governments being alike subordinate to the same people, that "the members of the general government, and those of the state legislature, are both chosen by the people — both from among the people, and are in the same situation." [Ibid. 68.] In reference to the phrase, "we, the people," he said: "The constitution is only a mere proposal. . . . *We* might adopt it, if we thought it a proper system, and then it would become *our* act. . . . It is no more than a blank, till it be adopted by the people. When that is done here, is it not *the people of the state* of North Carolina that do it, joined with the people of the other states, who have adopted it? The expression, then, is right." [Ibid. 25.]

Samuel Johnston, who was at the same time governor of the state, and the president of the convention, said, on the same occasion: "We are not to form a constitution, but to say whether *we* shall adopt a constitution to which ten states have already acceded. If we think it bad, we can reject it. If proper for our adoption, we may adopt it." [Ibid. 15.] Speaking of the several sacred rights of the people and states, which some feared the new plan endangered, he said: "If I thought any thing in this constitution tended to abridge these rights, I would not agree to it." As to amendments to secure the integrity of the states, and the subordination of the government to them, he said: "It will be adopted by a very great majority of the states. For *states* who have been as jealous of their liberties as any in the world, *have adopted it;* and they were some of the most powerful states. We shall have the assent of all the states in getting amendments. [Ibid. 57.]

Richard D. Spaight, a member of both the federal and state conventions, said in the latter: "The gentleman says we exceeded our

powers. I deny the charge. We were sent with a full power to amend the existing system. This involved every power to make every alteration necessary to meliorate and render it perfect. . . . What the convention has done is a mere proposal. It was found impossible to improve the old system without changing its very form; for by that system the three great branches of government are blended together. . . . The proposing a new system, to be established by the assent and ratification of nine states, arose from the necessity of the case." This new system he shows to be a federal government, with the legislative, executive, and judicial functions divided and independent. But was there, as Webster has since asserted, a change from a confederation to "another system?" Let Mr. Spaight answer: "If *we* do not adopt first, *we* are no more a part of the union than any foreign power. . . . If we adopt first, our representatives will have a proportionable weight in bringing about amendments. . . . *It is adopted by ten states* already. The question, then, is not whether the constitution be good, but whether *we will*, or will not, *confederate* with the other states." [Ibid. 206–8.]

The Sovereign rejects the League. — But I have quoted enough. The friends and foes of the new plan were, in this convention, as they were in every other, opposed to consolidation, and in favor of preserving the integrity of the state, and her sovereign will over her interests and destiny. That this statehood was endangered by the unamended constitution, was the opinion of North Carolina, for she refused to adopt, by a majority of 188 to 88, but simultaneously made the following record: "In convention, August 1, 1788: Resolved, that a declaration of rights, . . . together with amendments, . . . ought to be laid before congress, and the convention of states, that shall or may be called, previous to the ratification of the constitution aforesaid, on the part of *the state* of North Carolina." [Ibid. 242.] And she proceeded then and there to make such declaration [Ibid. 243], and to join Massachusetts in demanding further safeguards for state integrity. Her version of the then prospective Tenth Amendment is as follows: "That *each state* in the union shall respectively retain every power, jurisdiction, and right, which is not by this constitution delegated to the congress of the united states or to the departments of the federal government." [Ibid. 244.]

The Sovereign ratifies the League. — Having, like a sovereign, rejected, she subsequently, in her own time and manner, and on her own terms, like a sovereign, ratified the constitution — no power or influence exhibiting itself, in any quarter, to operate upon her will. On the 13th of September, 1788, as we have seen, the congress of the states resolved to put the new government in operation, which was

duly done; whereafter, to wit, on November 21, 1789 (the general government having been organized; Washington elected president by all the states that had joined the union — except New York, she not participating; and the desired amendments assured), North Carolina, by a vote of 193 to 75, ratified the constitution as follows: Resolved, that **this convention, in behalf of the freemen, citizens and inhabitants of the state of North Carolina, do adopt, and ratify the said constitution and form of government.** Done in convention this 21st day of November, 1789." [I. Ell. Deb. 244.]

Was this not acting like a "sovereign, free and independent state," as all the states solemnly agreed and guarantied she was?

Why did not Mr. Webster's great "We-the-people" nation — the great sovereign commonwealth, that "once upon a time" — in his imagination — so sovereignly distributed its powers between its "general" and its "local" governments, give North Carolina her share, and compel her to take it? Was it just and merciful to her people, to allow her to remain — as long as she chose to be contumacious — utterly destitute of power for their protection and welfare? — for, be it known and understood, that "our states had their *status* in the union, and no other legal *status!*" and "*neither more nor less power than that reserved to them by the constitution!*" So said Mr. Lincoln — rather emphasizing, though not misstating, the views of the great Massachusetts expounders, Dane, Story, and Webster.

Washington versus Webster. — Webster's chief dogma is, as we have seen, that the constitution is the union or association of an undivided nation, and that in it, this people distribute *their* powers between *their* general and state governments. The following shows Washington's idea: —

On May 10, 1789, the governor and council of North Carolina addressed congratulations to him on his election to the presidency, saying, among other things: "Though this *state* be not yet a *member* of the union, under the new form of government, we look forward with pleasing hope to soon becoming such, and in the meantime consider *ourselves* bound in a common interest and affection with the *other states*, waiting only for such alterations as will remove the apprehensions of the good citizens of *this state*, for those liberties for which they have fought and suffered, in common with others." Signed by Samuel Johnston, governor, and James Iredell, president of the council.

Gen. Washington replied June 19, 1789. He considers "the letter . . . but as indicative of the good dispositions of the citizens of your *state* towards their *sister states*, and of the probability of their speedily acceding to the new general government." He joins them in the

hope that the "union will be as perfect, and more safe than it has ever been," and concludes by imploring "Divine guidance in the councils which are shortly to be taken by their delegates, on a subject of the most momentous consequence. I mean the *political relation* which is to subsist hereafter between the *state* of North Carolina and the *states* now in union, under the new general government." For this correspondence, see the American Museum for July, 1789.

President Washington, Gov. Johnston, and Judge Iredell did not know of any "association of the people" of all the states "uniting their power," "joining their highest interests," "blending in one indivisible mass all their hopes for the future," and exhibiting a "national will" "effectually controlling," "state sovereignty." [Webster's speeches of 1830 and 1833.] The eminent teachers of Massachusetts did not "keep a school" in those days, to teach that the union was not an association of states, — i. e. "the united states;" and these unsophisticated fathers thought the people had no social or political organization, and no capacity to act politically, except as states.

They took for granted, and acted upon, the principle Massachusetts had promulgated, — a principle applicable alike to all the equal states of America, viz., "That the people of this commonwealth have the sole and exclusive right of governing themselves as a *free, sovereign and independent state!*"

CHAPTER XII.

RHODE ISLAND FEDERALIZES HERSELF.

THE THIRTEENTH TO RATIFY — REJECTION, MARCH, 1788 — ADOPTION, MAY 29, 1790 — VOTE, 34 TO 32.

THIS little state rejected the constitution, by a direct vote of her people, in March, 1788. The vote was 2,708 to 232, many citizens declining to vote. Two years afterwards, when the amendments, deemed necessary to secure state sovereignty were assured, she called a convention, which, after duly deliberating, ratified the constitution by a vote of 34 to 32, — the following extract being the material part of her ordinance: "**We, the delegates of the people of the state of Rhode Island and Providence Plantations,** duly elected and met in convention, having maturely considered the constitution for the united states of America, . . . (a copy whereof precedes these presents), and having also seriously and deliberately considered the present situation of this state, . . . **in the name and behalf of the people of the state of Rhode Island and Providence Plantations, do, by these presents, assent to and ratify the said constitution.** . . . Done in convention at Newport, . . . the 29th day of May, A. D. 1790."

Rhode Island, then, with the absolute right to adopt or reject, ratified, and made the thirteenth of the sovereigns that constituted the federation, and the federal government.

Washington's View of the Act. — In June, 1790, to the legislature of Rhode Island, Washington wrote, acknowledging their congratulations on his "election to the chief magistracy of our *confederate* republic," and expressing his "pleasure at *the completion of our union by the accession of your state.*" [X. R. I. Colonial Records, 410.] To Gov. Fenner, of Rhode Island, he wrote, June 17, 1790, congratulating him on the ratification of that state, and on the attainment of the union of "all those *states* which were originally confederated." "Our bond of union," continued he, "is now complete, and we are once more as one family." He meant family of states, and not of persons.

Finis coronat Opus. — Rhode Island then crowned the work of union, as she now crowns the argument of federalization. Even

Mr. George T. Curtis, at present the leading expounder of the Massachusetts school, admits that Rhode Island was then in a condition of "absolute sovereignty." [II. Hist. Const. 599.] Just as she existed, she took her place in the federal system, without any change being provided for, or hinted at. Indeed, she was named as a pre-existent and unchanged political entity. That name — Rhode Island — could have had but one meaning, as to people, organism, or political right.

Nay, more, she crowned the testimony of the states on the question of their intended absolute sovereignty in the union, in a way not generally noted and appreciated as it should be. Massachusetts, in her convention, had insisted that after the states should adopt, and carry into effect, the new constitution, they should amend it, declaring that "All powers not expressly delegated by the constitution, are reserved to the several states." [II. Ell. Deb. 177.] Samuel Adams, in said convention, had stated nem. dis., that this was a "summary of a bill of rights," and that it meant that "each *state* retains its *sovereignty*," etc., "and every power," etc., "not expressly delegated to the united states." He wrote to E. Gerry and R. H. Lee, in congress in 1789, that the amendment was desired, so that the people might always "see a line drawn, as clearly as may be, between the federal *powers* vested in congress, and the distinct *sovereignty* of the several states." [III. Life of Samuel Adams.]

Moreover, South Carolina, New Hampshire, Virginia, New York, and North Carolina had joined Massachusetts in demanding the amendment; and it had become universally understood that such amendment would be made, to make assurance doubly sure against consolidation of the states, which Ames, Parsons, Madison, Hamilton, Marshall, Pendleton, and others had assured the people was impossible under the constitution, as it stood without amendment. Again, North Carolina had rejected, because of the want of such provision, but had subsequently ratified, because she felt confident it would be made.

It was then that Rhode Island crowned the evidence against the intent of consolidation, as follows: "And the convention do, in the name and behalf of the people of the state, . . . enjoin it upon their senators and representatives . . . elected *to represent this state* in congress, to . . . use all reasonable means to obtain a ratification of the following amendments . . . :

"1. The united states shall guaranty to each state its *sovereignty*, freedom and independence, and every power, jurisdiction and right, which is not by this constitution expressly delegated to the united states . . ." [I. Ell. Deb. 336.]

Thus we see the *status* that Rhode Island, in common with her sisters, intended and expected to have in the union. And history shows that the commonwealths, and leading public men, all held the idea that sovereign republics were constituting a federal government, or, in other words, an agency, through which to exercise their powers for their common defence and general welfare. [See again, Part I., Ch. VII.]

The Republic of Republics. — We have now patiently gone through the historical records of all the original states, and ascertained from the testimony of their leading men, who were the advocates of the new system, and from the acts of the states themselves, that the constitution was formed and vitalized by thirteen independent and concurrent wills, each with no superior on earth; that each and every convention was authorized and elected solely by the state it acted for, to deliberate on the proposed system, and express that state's will in ratifying or rejecting it; and that, therefore, no great nationality or national will ever did, or could possibly, exert itself in the premises; but that the thirteen states did *associate themselves* by federal compact, "to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty;" and did thereby "form a more perfect union" of states, as well "as a more efficient federal government."

The association formed was necessarily a confederacy, for its constituents were states, which remained intact after its establishment. [Art I., § 2, c. 3.] It was properly called the "federal system," or "confederated republic," by Washington and his compeers; and it completely answered to the "republic of republics" of Montesquieu.

CHAPTER XIII.

THE "EXECUTED" "DEED."

HAVING shown from the sacred records of the country, who the parties to the "deed" were, and their successive executions of the same, I now present to the eye, the instrument and its real makers together, as an ocular or pictorial view will enable the simplest person to see and expose the leading and misleading perversions of those sophists, who infest every section and neighborhood, and busy themselves in undermining those temples of liberty, the commonwealths.

A Fatal Admission of Mr. Webster. — Though Mr. Webster said the federal constitution was made by a nation, and not by states; and that it contained no element of a compact, he could not fail, owing to the nature of the case, to contradict himself, and make fatal admissions, as will be more plainly seen hereafter. The following example is from his speech in reply to Calhoun, in 1833: "The constitution," said he, "began to speak only after its adoption. Until it was ratified by nine states, it was but a proposal — the mere draft of an instrument — a deed drawn but not executed."

The admission that "it was ratified by nine states," and "began to speak only after its adoption" by these states, is a giving up of the whole case, for the product of such ratifications could only be a pact, treaty or league — and all the ink of the Massachusetts school cannot prevent the fatality of the admission!

Now let us see the "Deed" as "Executed." — That is to say, the constitution of general government, as "done" by the thirteen states, together with their names as constituents, and their ordaining words, — the only words ever used to give it life and legal force, — the only words that could possibly ordain and establish it; the words that were, so to speak, *the enacting clause* of the said supreme law. The reader will please refer constantly and thoughtfully to the constitution and its parties; and the ordaining words of these, as presented on the ensuing pages. Abridgment, and typographical devices are resorted to, for obvious purposes.

CONSTITUTION OF THE UNITED STATES OF AMERICA.

WE THE PEOPLE of the united **STATES**, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the united **STATES** of America.

ARTICLE I., SECTION 1. **ALL LEGISLATIVE POWERS** herein granted, shall be **VESTED** in a **Congress** of the united **STATES**, which shall consist of a senate and house of representatives.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several **states**, and the electors in each **state** shall have the qualifications requisite for electors of the most numerous branch of the **state** legislature.

* * * Representatives and direct taxes shall be apportioned among the several **states** which may be included within this union, according to their respective numbers. * * *

The number of representatives shall not exceed one for every thirty thousand, but each **state** shall have at least one representative; and until such enumeration shall be made, the **state** of **NEW HAMPSHIRE** shall be entitled to choose three; **MASSACHUSETTS**, eight; **RHODE ISLAND** and Providence Plantations, one; **CONNECTICUT**, five; **NEW YORK**, six; **NEW JERSEY**, four; **PENNSYLVANIA**, eight; **DELAWARE**, one; **MARYLAND**, six; **VIRGINIA**, ten; **NORTH CAROLINA**, five; **SOUTH CAROLINA**, five; and **GEORGIA**, three.

When vacancies happen in the representation from any **state**, the executive authority **thereof**, shall issue writs of election to fill such vacancies. * * *

SECTION 3. The senate of the united **states** shall be composed of two senators from each **state**, * * * and each senator shall have one vote. * * *

SECTION 8. The congress shall have power—[here follows an enumeration of the powers of congress, and prohibitions on congress and the states].

ARTICLE II., SECTION 1. **THE EXECUTIVE POWER** shall be **VESTED** in a **president** of the united **STATES** of America. * * *

Each **state** shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the **state** may be entitled in congress. * * *

ARTICLE III., SECTION 1. **THE JUDICIAL POWER** of the united **STATES** shall be **VESTED** in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. * * *

ARTICLE IV., SECTION 1. Full faith and credit shall be given in each **state** to the public acts, records, and judicial proceedings of every other **state**.

SECTION 2. The citizens of each **state** shall be entitled to all privileges and immunities of citizens in the several **states**. * * *

SECTION 3. New **states** may be admitted by the congress into this union; but no new **state** shall be formed or erected within the jurisdiction of any other **state**; nor any **state** be formed by the junction of two or more **states**, or parts of **states**, without the consent of the legislatures of the **states** concerned, as well as of congress. * * *

SECTION 4. The united **states** shall guaranty to every **state** in this union a republican form of government, and shall protect **each** of **them**

against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or on the application of the legislatures of two-thirds of the several **states** shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three-fourths of the several **states**, or by conventions in three-fourths **thereof**, as the one or the other mode of ratification may be proposed by congress; provided that * * * no **state**, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI. All debts and engagements entered into, before the adoption of this constitution, shall be as valid against the united **states** under this constitution, as under the confederation.

This constitution and the laws of the united **states**, which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the united **states**, shall be the supreme law of the land; and the judges of every **state** shall be bound thereby, and anything in the constitution or the laws of any **state** to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several **state** legislatures, and all executive and judicial officers, both of the united **states** and of the several **states**, shall be bound by oath or affirmation to support this constitution; but no religious test shall be regarded as a qualification to any office or public trust under the united **states**.

ARTICLE VII. The ratification of the conventions of nine **states** shall be sufficient for the establishment of this constitution between the **states** so ratifying the same.

I. DELAWARE. "We, the deputies of THE PEOPLE of the DELAWARE STATE, * * by these presents do, in virtue of the power and authority to us given for that purpose, for and in behalf of ourselves and constituents * * approve of, assent to, RATIFY, and confirm, the said constitution. Done in CONVENTION * * Dec. 7, 1787," by unanimous vote.

II. PENNSYLVANIA. "We, the delegates of THE PEOPLE of the COMMONWEALTH of PENNSYLVANIA, * * do, in the name and by the authority of THE SAME PEOPLE, assent to and RATIFY the foregoing constitution for the united STATES of America. Done in CONVENTION, 12th Dec., 1787." Vote 46 to 23.

III. NEW JERSEY. "We, the delegates of the STATE of NEW JERSEY, * * do hereby, for and on behalf of THE PEOPLE of the said STATE of NEW JERSEY, agree to, RATIFY, and confirm the same, and every part thereof. Done in CONVENTION, 18th Dec., 1787," by unanimous vote.

IV. GEORGIA. "We, the delegates of THE PEOPLE of the STATE of GEORGIA, * * by these presents do, in virtue of the powers and authority to us given by THE PEOPLE of the said STATE for that purpose, * * assent to, RATIFY, and adopt the said constitution. Done in CONVENTION * * 2d Jan., A. D. 1788," by unanimous vote.

V. CONNECTICUT. "In the name of THE PEOPLE of the STATE of CONNECTICUT: We, the delegates of THE PEOPLE of said STATE, * * by these presents, do assent to, RATIFY, and adopt the constitution. * * Done in CONVENTION, Jan. 9, 1788." Vote 128 to 40.

VI. MASSACHUSETTS. "The CONVENTION * * do, in the name and in behalf of THE PEOPLE of the COMMONWEALTH of MASSACHUSETTS, assent to, and RATIFY the said constitution. Done Feb. 7, 1788." Vote 187 to 168.

VII. MARYLAND. "In CONVENTION * * we, the delegates of THE PEOPLE of MARYLAND, * * do, in the name and on behalf of THE PEOPLE of this STATE, assent to and RATIFY, the said constitution." Done April 28, 1788. Vote 63 to 11.

VIII. SOUTH CAROLINA. "The CONVENTION * * do, in the name and behalf of the people of this STATE, hereby assent to, and RATIFY the said constitution. Done in CONVENTION 23d of May, A. D. 1788." Vote 149 to 73.

IX. NEW HAMPSHIRE. "The CONVENTION * * do, in the name and behalf of THE PEOPLE of the STATE of NEW HAMPSHIRE assent to, and RATIFY the said constitution for the united STATES. Done June 21, 1788." Vote 57 to 46.

X. VIRGINIA. "We, the delegates of THE PEOPLE of VIRGINIA, * * now met in convention, * * in the name and in behalf of THE PEOPLE of VIRGINIA, do, by these presents, assent to, and RATIFY the constitution * * hereby announcing to all those whom it may concern, that the said constitution is binding upon THE SAID PEOPLE, according to an authentic copy hereto annexed. * * Done in CONVENTION, this 26th of June, 1788." Vote 89 to 79.

XI. NEW YORK. "We, the delegates of THE PEOPLE of the STATE of NEW YORK, * * in the name and behalf of the PEOPLE of the STATE of NEW YORK, do, by these presents, assent to, and RATIFY the said constitution. * * Done in CONVENTION, the 26th of July, 1788." Vote 30 to 27.

XII. NORTH CAROLINA. "Resolved that this CONVENTION in behalf of THE FREEMEN, citizens and inhabitants of the STATE of NORTH CAROLINA, do adopt and RATIFY the said constitution. Done in CONVENTION this 21st Nov., 1789." Vote 193 to 75.

XIII. RHODE ISLAND. "We, the delegates of THE PEOPLE of the STATE of RHODE ISLAND, * * in the name and in the behalf of THE PEOPLE of the STATE of RHODE ISLAND, do, by these presents, assent to, and RATIFY the said constitution. * * Done in CONVENTION, the 29th of May, A. D. 1790." Vote 34 to 32.

This Depicts the Complete Federal System. — I have now brought the instrument, and the parties that ratified and established it, within a glance, carefully quoting the material parts, and leaving out the rest, — the object being to make a pictorial impression of the completed compact, or "executed deed" on the ordinary as well as the cultivated mind. Furthermore, to compel attention to some things that would otherwise escape notice, I have put in use some of the aids of typography. It is obviously not the mere instrument, but the *instrument*, the *parties*, and the *government* established, that make up the federal system. We have now, under our eye: 1. The "deed" as Mr. Webster chooses to style it; 2. The names of the parties to it; 3. The only "ratifying," "ordaining," and "establishing" words ever used, to give force to the "instrument;" 4. The date of each of the ratifications, showing the *severalty* of them; 5. The corporate vote of each party, expressing *her will* to execute the "deed." This gives us the *tout ensemble*, as in a picture — the vitalized "instrument" — the "deed" "executed." Now we know and realize beyond a doubt, that the plan was framed in a "convention of states," and submitted to each state, to be ratified or rejected; that each state, of its own motion, and in its own time, called a convention to act upon it; that the thirteen states successively "ratified" the instrument, just as any other thirteen parties would have acceded to, or ratified, any other instrument; that these are the only parties the history and records of the country give any account of; and, finally, that the only possible legal and political result was a compact of federation, and a constitution of federal government. These were the ideas of the fathers; and, when we reach, as we shall presently, the examination of the "deed" itself, we shall find full corroboration; for it will appear that the states were contemplated, and provided for, as sovereign parties and actors, in every section and every line of it.

The Essentials of a Federation. — We see here all the "executed" "deed," or instrument, as a whole; also who the parties to it are, and how they vitalized it. Precisely as thirteen states of Europe would have done, our thirteen states successively ratified the great compact, thus exactly filling the technical measure of a league or federation, and rendering impossible anything else. That those constituents act by ambassadors, while ours act by conventions, is of no moment. The product of independent but concurring wills must be a compact. As Mr. Webster admits, the "instrument" became the "deed" "executed," when ratified by the several wills of nine states. "Till then," said he, "it was inoperative paper," having "no authority" and speaking "no language." [Speech of 1833.] A mo-

ment's reflection will show that anything, in the premises, but a compact, was a legal impossibility, while anything but a federation was a political one; for here were precisely the elements of each — no more, no less: 1. The cause, motive or consideration; 2. The parties capable of contracting; and 3. The assent or ratification of each and all.

A *second* moment's reflection shows that instead of the constitution being merely a law, as Daniel Webster is said to have argued, it involves: 1. The *compact* between the states; 2. The *law* of the said states on the subjects of their government; and 3. The constitution of the agency through which they, the said republics, intended to govern.

A *third* moment's reflection will show that THE TRUE PRESENTATION OF OUR SYSTEM is the above, which we ought to frame and hang on every wall, or print in every book of instruction; and that if this were done, it would so impress the people, and the rising generation (pictorially, as it were), that all the hermeneutics of the hermeneutical Massachusetts school could not interpret or expound it away. All would see and know that each state virtually signed and sealed the constitution, through her organ, the convention, which expressed her will to "*ratify*" — using, in every ordinance, this very word — the word which the sovereigns of the world everywhere habitually use, in adopting and vitalizing the compacts, treaties, leagues, alliances, etc., which their commissioners or ambassadors prepare.

A *fourth* moment's reflection will show how absurd is the idea of growth or development of written institutions. "The logic of events" cannot reason us to "another system" than the one our fathers founded. Such well-known words as "constitution," "establishment," etc., which have for their very soul the sense of *stare*, to stand, show that the harness the fathers devised, and the sovereigns imposed on their rulers, and the tests of right and justice they consecrated in our organic laws, were intended to remain fixed, as the defences of our blessings of liberty. It is only the said sovereign authority that can ever ordain any change.

I shall hereafter treat of this most interesting and vital subject at some length.

There is no other History of Establishment. — If states were not the only parties ordaining and establishing, why can we not find the history of some other action to this end? Why should the last article of the instrument provide "for the *establishment* of this constitution *between the states* so [*i. e.* by conventions] ratifying the same?" Why should all the leading fathers say, as they did do, at the time of establishing it, this system is *a federation of sovereign states?* [See their statements in Part I., Ch. VII.]

The plain answer is that the states were associating to make themselves "the united states," or the "union of states," as the constitution itself repeatedly characterizes the association formed; and it was politically and morally impossible that a general government, constituted and carried into effect by such parties, should be other than a federal government, or that their union should be other than a federation of equal sovereigns.

Until the new federal constitution was completely "established," as a living and operating form of government, in place of the old; that is to say, until nine states had ratified, and had acted severally in electing federal functionaries, and these had convened and organized themselves as the new federal government; the solemn treaty-stipulation, guaranty, and pledge of faith, of all the states to each, was in full force, in the following words: "EACH STATE RETAINS ITS SOVEREIGNTY." [See the first fed. const'n., Art. II.] With this supreme and majestic *status* and character, each and all acted. Must not sovereignty have existed in each state, through the act of establishing, and hence afterwards, to enforce, and, if need be, to amend? When did this sovereignty, and the voluntariness of the association cease?[1]

Gross Pictorial Deception. — In all the publications of this great instrument, from the beginning to this day, the following words are placed at the close: "Done in convention by the unanimous consent of the states present, this 17th of September, 1787." Affixed to this are the names of the mere framers, and of the states they represent. A pictorial impression is thus made upon the popular mind, which the "Massachusetts school" deepen, by speciously and sophistically using the preamble, the supreme-law clause, and the Tenth Amendment. They say that the constitution teaches that "we, the people" of the nation, "do ordain and establish" [preamble]; that what the nation ordains is "the supreme law of the land" [Art. VI., § 2]; and that all powers, not delegated by the nation, in this constitution, are, by the said nation, "reserved to the states respectively, or to the

[1] While showing the states to be the absolute, the exclusive, and the only possible parties to the constitution, it is well to note the theory of the remarkable work called "The Lost Principle," by Barbarossa, published at Richmond, in 1860. It sets forth that the warm controversy on representation, between the large and the small states, and between the North and the South, that rose in the convention of 1787, resulted in establishing an equilibrium between the sections by compact. Such compact — or more properly speaking, adjustment or understanding — if such there was, does not come under my aim, which is to set forth an actual written compact, constituting a government (and *ipso facto* a union of states), and delegating specific powers. The terms of that instrument, its powers and parties, are most palpable; and nothing is said in it of sections or their agreements. However, the subject will be more extensively noticed in Part III., while the author's theory will be found in the Appendix, set forth in his own words.

people" [Amendment X.]. This is the pith of the consolidation doctrine. And it is well to add here, that Judge Story, as if to aid in misleading, asserts the aforesaid authenticating words to be a part of the constitution. [See his Com., § 1856.] This will be properly noticed hereafter. [See p. 172, *infra.*]

The result of the above teaching is, a popular belief that a system was devised, and put in force, in 1787, by the said framers, who represented and acted for the nation; while the states were present, consenting to be bound, and to have and enjoy only such rights and powers as should be "reserved to" them and the people; and that the subsequent ratifications by the states, were merely the taking of the affirming vote of the nation by sections, or "groups of voters." [See Jameson's Constitutional Convention, 59 *et seq.*]

Exposure of the Fallacy. — These, and other deceptions, produce in the popular mind a vague and false idea of our system, and divert attention from the real signers of the "executed" "deed," the real constituents of the constitution — "the people" as commonwealths. It is forgotten that these "moral persons" — the bodies-politic, named in the constitution — gave to that instrument all its life and validity, each, in its own time, place and convention, discussing the instrument, and ratifying it. It is forgotten that they delegated in it all the powers it contains; and ever afterwards administered it, through their own citizens and subjects, whom they elected or appointed for the purpose. It is forgotten, too, that it was only the draught, or unexecuted deed, that was "done in convention," while the living thing, *i. e.* the constitution of union and government, was not "done" — in the sense of being executed, *i. e.* ordained as law, and empowered to operate — till the commonwealths respectively acted on it, and gave it the only existence and legal force ever contemplated — each acting with her own absolute and exclusive will, and they taking two or three years to deliberate and determine whether to adopt or reject — the first adopting in December, 1787, the ninth and complemental one in June, 1788, and the thirteenth and last in May, 1790. These states, as Hamilton declared, *nem. dis.*, were "the parties to the compact" [Fed. 85], and the "essential component parts of the union" [II. Ell. Deb. 304]. And the said states were necessarily the only "parties," or "parts," possible, for they comprised — nay, they were themselves — all the people of the country, and had under their sovereignty and jurisdiction, all the territory.

The above deceptive presentation of the "executed" "deed," is like exhibiting a contract signed by the lawyers who framed it, instead of the parties to be bound. Or, it is like a conveyance, with the names of the conveyancers, instead of the vendor and vendee, affixed.

In a republic, these popular impressions are very important, as "the people," who of right govern in everything, are, unfortunately, gregarious, and addicted to following leaders and teachers. They seldom look beneath the surface, and, as appearances generally influence them, things virtually are, or rather become, what, to the masses, they seem to be. For example, in the case before us, under a constitution, which most clearly provides for *a federation of states*, governing themselves through agencies, we have *an empire of provinces*, held together and ruled by a central sovereignty!

The "More Perfect Union" of 1788. — We have now a complete and accurate conception of the "more perfect union" of states formed in 1788, to supersede the one of 1778, which had proved unsatisfactory. Though the above-quoted phrase shows that the constituents were the same in both unions, the great perverters audaciously say that the change nationalized the states, by consolidating them into one state or nation, instead of federalizing them. Mr. Webster asserted that "a change was made from a confederacy of states to a different system." [Speech of 1833.] So said Judge Story [I. Com. § 357]; and such was the statement of the federal supreme court in "Gibbons *vs.* Ogden." [9 Wheaton, 1.]

All history shows the falsity of the contention; the fathers declare it, as Chapter VII., Part I. shows; and we shall see in the next chapter that the constitution itself shows it to be utterly baseless.

The Identity of Character of the Two Unions, and the true conception of our present system can be at once ineffaceably stamped on the popular mind, and an end put to controversy, as follows:

1. Let the commonwealths be represented as so many symbolical figures. On the opposite page are 13 such, with their names. Each represents a republic or self-governing people — "free, sovereign and independent." Added to each is a figure representing its tripartite government — the legislature, the executive, and the judiciary.

2. Let a single figure be placed below to represent congress or the federal legislature — *i. e.* the first federal government.

3. Let a line be drawn from the legislature of each state to the congress, to indicate the imparting of existence and authority to the first federal constitution, that of 1778. It was adopted by the states through their legislatures.

4. Let there be added to the congress, to complete the tripartite form of government, two figures, one the executive, and the other the judiciary — thus representing the plan devised by the convention of 1787.

5. Then, a line drawn from each body-politic itself, instead of its

legislature, indicates the imparting of life and authority to the second federal constitution — that of 1788.

Both Systems Federal Unions. — This symbolical demonstration shows precisely our present system not only, but the difference in form and character between it and the first. Both systems were associations of commonwealths. Both unions were voluntary, and no involuntariness could supervene, for each state was a republic or self-governing people, with no limit of right; and each will that acted, survived, and presumably remained free. And in all the long track and record of progress, there is no shadow of evidence that the said bodies-politic were consolidated, or their wills subordinated. That is to say, *they were not provincialized again!*

They are now the same political entities that gained independence and statehood. Each has now the same individual name, geography, people, organism, mind and will, and the original and underived right and power that appertained, under God, respectively to the organized societies of people in 1776. And out of them no power has ever gone except delegations to their own members, citizens, and subjects, who, acting exclusively with such powers, can only be "substitutes and agents," as all the fathers called them.

The Separate Wills of States made both Systems. — It is obvious, then, that the system founded in 1788, was as much of a federation as the first, for the people of each state gave their consent and ordaining power to this as to that, in their character as a commonwealth, or sovereign political body; and more unmistakably in this case, as here it was the commonwealth itself that acted, while there it was its agent, the legislature; here the sovereignty directly delegated power, there the delegation was done by delegates. Masters and principals made up their minds and exerted their wills in the latter case, while servants and agents acted with *their* discretion in the former. States, in both instances, bound themselves in faith — in the former case affirming, or acquiescing in, the acts of their agents, but, in the latter, acting themselves. It is plain, then, that the union of 1788 was a voluntary association of pre-existent sovereigns — a federation of distinct and absolutely independent states. Indeed, these wills could not, by any political or moral possibility, come together, in peace and without force, for self-preservation and self-government, without a confederacy being the result. Voluntariness was essential, and force could only end it!

The Later Federation the "More Perfect." — If, therefore, I were to instance a complete federation, I would name the one of 1788, instead of the other; for, as to this one, the forms, acts and solemnities were of a higher character; the authority from the associating sove-

reignties was more direct and pronounced; the architects were abler, more experienced, and better instructed in public law and political philosophy; the action was much more deliberate and careful; and the structure was nearer perfection, more practical, and much better adapted to securing the ends in view, viz., "the common defence," "the general welfare," and "the blessings of liberty" of the self-joined states. [See Fed. Const. preamble.]

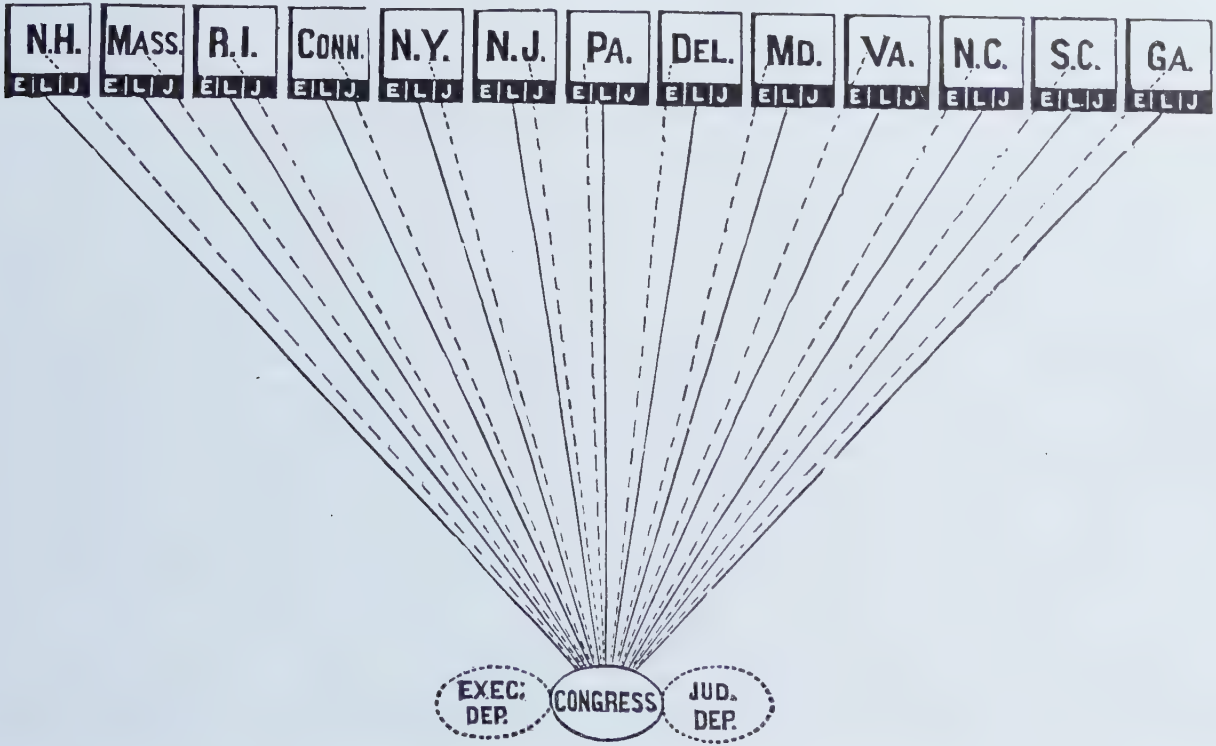
But let us conclude these chapters on Federalization with one asking the constitution itself what polity it provides for, keeping in mind not only the naming of the states therein, and their separate ratifications to establish it, but the all-important facts: —

1. That the congress of the states declared, on the 13th of September, 1788, that "*the constitution . . . has been ratified in the manner therein declared to be sufficient for the establishment of the same;* and such ratifications, duly authenticated, have been received by congress, and are filed in the office of the secretary;"

2. That the said instrument was then complete as *the compact, the law, and the constitution of government* of the said ratifying and establishing states; and

3. That, thereafter, to operate the machine that had been so deliberately planned, completed, and pronounced good, "*the states began to act under the new compact*" — to use Washington's phrase [p. 230 *infra*] — by electing their respective quotas of the set of operatives, so to speak, who were to work it.

The ship of state, which was built and made ready for sea in 1787–88, did not ship her crew and set sail on her first voyage till March, 1789!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EXEC. DEP.
CONGRESS
JUD. DEP.

CHAPTER XIV.

THE TESTIMONY OF THE CONSTITUTION.

WE shall hereafter gradually see what I now assume, that in the republican form of government, sovereignty, according to its nature, controls every person and thing within its territory, and is itself above all control; that it is indivisible and inalienable; that it does in nowise consist of the rights and powers it grants and delegates; that while it is the right to govern, it is not the government, — this being the exercise of sovereignty through agencies and instruments; that sovereignty is predicable only of will; that political will can only exist and be exercised in and by an organized community of people; that hence each state must be sovereign for itself, *i. e.* have the absolute right of self-government in all things; that by their wills the states made "the constitution of the united [or associated] states;" that in so doing they federated; that entirely intact their said wills must remain to govern (each itself locally, and they themselves generally), and to amend their constitution if they wish; and, finally, that, in all respects, *the union is an association of sovereigns.*

I shall now show that the federal instrument fully proves this theory, and contains nothing against it.

"What does it say of itself?" — In his speech of 1833, Mr. Webster, while conceding that the constitution was no more than "a deed drawn but not executed" till it was ratified by the states, said: "The question whether the constitution is a compact between states, is one which must be mainly argued from the instrument itself." He then asks, "*What does it say of itself?* What does it purport to be? Does it style itself a league, confederacy, or compact between sovereign states?" And answers, "Certainly not; but it declares itself a constitution." This advances us not a step, but leaves the question still before us: *What is the constitution?* Let us then adopt his suggestion, and ask the "deed" what it has to say of itself, taking care to keep out of his sophistical clouds.

The Testimony of the Title and Preamble. — The title is "The Constitution of the United States," and the preamble says: "We,

the people of the united states, . . . do ordain and establish this constitution for the united states of America." Whose constitution, then, is it? The title answers, "the constitution of the * states." Who is it for? The preamble answers, "this constitution for the * states." The states, then, are the important subjects of these sentences, while the word "united" — meaning associated — is a mere adjective. These phrases obviously refer to the pre-existent states, united by the pact. It was only as such bodies that "the people" could become parties to the constitution, for each individual citizen was a member of the state, and had no right whatever to act politically, except in such body and as such member.

Again, "people of" and "constitution of," like "government of," "treasury of," "army and navy of," and the like phrases throughout the instrument, are possessive phrases, necessarily implying that the political entities mentioned, belonged to "united states," not united people; which is literally the fact, and which was the understanding of the fathers. We are then compelled to say that the owners of these things, are so many states; that each must have the mind and will of an owner; and that the phrase "united states" can but mean pre-existent communities, who have conjoined themselves in league.

And the repeated use, in the said pact, of the phrase "union of states" conveys the same idea [Art. I., § 2; Art. IV., §§ 3, 4]. Nay, more, the states referred to in the preamble, must be those which the second article of the first federal pact declared to be sovereign, and which must have remained so, in and *through* the very act and moment of forming the "more perfect union," described and "established" in the second and present federal pact.

We find, then, that the title and preamble of the constitution, illustrated by history, conclusively show a union of distinct commonwealths, coequal, and of course each for itself sovereign. I shall now proceed to show that all the instrument consists with these views, and proves itself to be a *fœdus* of absolute sovereignties.

The "Deed" names and recognizes the States. — Art. I., § 1, declares that "representatives and direct taxes shall be apportioned among the several *states* which may be *included* within this *union*, according to *their* respective numbers." The article then provides for a numbering and apportionment within three years, and decennial repetitions of the same, and continues as follows: "The number of representatives shall not exceed one for every 30,000, but each *state* shall have at least one representative; and until such enumeration shall be made, the *state* of New Hampshire shall be entitled to choose 3, Massachusetts 8, Rhode Island 1, Connecticut 5, New York 6, New Jersey 4, Pennsylvania 8, Delaware 1, Maryland 6, Virginia 10, North Caro-

lina 5, South Carolina 5, and Georgia 3. When vacancies happen in the representation from any *state*, the executive authority *thereof* shall issue writs of election to fill such vacancies."

Here are named the political bodies which are alike "the united states" and "the people of the united states," for "the people" are the states, and the states are "the people." This section shows pre-existent historical bodies, with their respective names, geographies, organisms and independent political wills, — bodies which fully and precisely filled the description of the state or nation of public law, and which associated themselves as "the united states" for their "common defence and general welfare," becoming thereby "the several states" of "this union," as the constitution repeatedly calls them. The presumption is that each remained the same political body *in* the union, that acted in *entering* it, especially as there is no provision degrading, or even in the slightest degree changing, a state.

A fact commonly overlooked, though very important, should be noted here. The word "state" in the constitution, referring to New York or Virginia, means precisely what it does when it refers to France or Russia, *i. e.* the state or nation of public law. For instance, Art. III., § 2, provides for jurisdiction of cases "between a state, or the citizens thereof, and foreign states, citizens or subjects." [See also Amendment XI.] The words "state" and "states," used by the fathers without qualification, must mean what they do when used by publicists. The language they used must be taken in its established sense at that time. [See I. Story Com. § 207.]

All Elections or Powers are of States. — All authority to elect federal functionaries, and all the "powers delegated to them," belong absolutely to the states, by virtue of their original existence and right. Article I., § 1, declares that "*all* legislative powers herein granted, shall be vested in a congress of the united states, which shall consist of a senate and house of representatives." The "members" of the "house" are to be "*chosen* every second year, *by the people* of the several *states*," who are qualified to elect members of the lower branch of the state legislature. "The senate . . . shall be composed of two senators from each *state, chosen by the legislature thereof*, for six years." These provisions show that these two bodies, which are to possess and exercise "*all* legislative powers herein granted," are to be entirely elected by the "states."

Section 8 of the same article declares, that the aforesaid "congress shall have power" to levy taxes, borrow money, regulate commerce, make the coinage, establish a postal system, declare war, raise armies, provide a navy, etc. In section 9 are the restrictions put by the states upon their congress, *i. e.* "the congress of the * *states*;"

and in section 10 are the inhibitions imposed by the states upon themselves, in which they agree not to make treaties, grant letters of marque, coin money, pass *ex post facto* laws, or such as impair the obligation of contracts, levy duties without the consent of congress, keep troops or war-ships in time of peace, or engage in war, unless actually invaded, etc.

We now see that the legislative provisions necessarily imply distinct and sovereign states, voluntarily united and voluntarily acting in the union; and show that the said states elect, by their voters, all the members of both houses of congress — this body having "all legislative powers herein granted." Nay, more, we see that both houses of congress are elected by, and do represent, states alone — such states being identical with "the people of the united states." Here also is seen the untruth of the assertion that the house of represenatives is "national" in character, instead of federal. The representatives are "apportioned among the several *states;*" "each *state* shall have at least one representative;" the filling of "vacancies in the representation of any *state*" is provided for; the representatives are to be elected by and in "the several *states;*" and they are to be a part of "the congress of the * *states.*"

And, consistently with the above, Article II., § 1, declares that "the executive power shall be vested in a president;" and that "*each state* shall . . . appoint a number of electors, equal to the whole number of senators and representatives to which *the state* may be entitled in the congress." It is further provided that these electors are to meet in *the state*, and cast the vote of *the state*, and transmit the same sealed, to congress, where, in due time, it is to be opened and counted with the others.

So far we see that the "deed" contains no idea which is not strictly one of federation, of state authority, and state action. And these legislative and executive representatives and agents of the states, are to provide for and appoint all other officers (including the judicial functionaries) of these leagued or federated states.

The Federal Government always Vicarious. — The constitution expressly shows that all federal "powers" are, and remain, derivative from, and subordinate to, the states as such.

Article I. declares that "all legislative powers herein granted, shall be *vested* in a congress of the united states." Article II. declares that "the executive power shall be *vested* in a president of the united states." Article III. declares that "the judicial power of the united states shall be *vested* in one supreme court," etc. Whose "judicial power" is referred to? "The judicial power of the united states," of course. Whose legislative and executive authority is meant? That of the same states.

But it would be insulting the intelligent reader to argue such a matter further. No one can suppose that this created thing and agency called the government could have "absolute supremacy" over the states that established it, or indeed over any person or thing whatever.

All Citizens and Subjects are those of States. — The next two articles will prove that *all* federal officers and *all* citizens are *citizens of the states*, and of course respectively their subjects; as well as show still further that the states were intended to be the sole parties to and actors in the federal system. Article III. with Amendment XI., provide that "the judicial power shall extend . . . to controversies between two or more *states;* between a *state* and citizens of another *state;* between citizens of different *states;* between citizens of the same *state*, claiming lands under grants of different *states;* and between a *state*, or the citizens *thereof*, and foreign states, citizens and subjects," but that (as the amendment provides) this "power shall not be construed to extend to any suit against one of the united *states* by citizens of another *state*, or by citizens or subjects of any foreign state."

Here and in Article IV., § 2, we find *the whole* "*people* of the united states" provided for, in reference to judicial matters, and privileges of citizenship, under the description of *citizens of states.*

But let us go on. Article IV. says: "Full faith and credit shall be given in each *state* to the public acts, records and judicial proceedings of every other *state*. . . . The citizens of each *state* shall be entitled to all privileges and immunities of citizens in the several *states*."[1]

The Union was made to preserve the States. — The following clauses of this same Article IV. put it beyond doubt that the union was to be composed exclusively of states; and that the great object of forming it was the preservation of them in their full pre-existent integrity and sovereignty. "New *states* may be admitted by congress into this union; but no new *state* shall be formed or erected within

[1] This is the only citizenship in the united states, that the fathers ever contemplated. A state, as will be seen, is the members thereof, bound in the social compact. Look at the present constitutions of Massachusetts and New York. The latter calls her people "members" and "citizens" of the state. Massachusetts sets forth the actual social compact in her preamble, and calls her citizen "a subject of this state," as he is in fact and in right. In a republican state the social compact is the only possible tie of allegiance. We shall see this hereafter, as well as that the only allegiance in our country is due to the state.

When the phrase "citizen of the united states" is used, it means a citizen and subject of a state, entitled to the benefit of this stipulation of his sovereign, when he goes to any one of the federalized states, *i. e.* he can go to any state, and have the same "privileges and immunities" as the citizens of that state enjoy.

the jurisdiction of any other *state;* nor any *state* be formed by the junction of two or more *states* or parts of *states,* without the consent of the legislatures of the *states* concerned, as well as of the congress. . . . The united states shall guaranty to every *state* in this union, a republican form of government, and shall protect each of *them* against invasion," etc.[1]

The Wills of States must live to amend. — Article V. provides for amendments by the "*ratification*" of three-fourths of "*the states;*" and that "no *state* without *its consent* shall be deprived of *its* equal suffrage in the senate." Here alone are two irrefutable proofs of the correctness hereof, and of state sovereignty in the union. 1. The phrase, "its consent," shows beyond question the contemplated survival of the sovereign wills which acted to "ordain and establish this constitution." 2. States cannot ratify amendments, without having kept, for future exercise in ordaining, the wills that originally "ratified" and "ordained." And if the reader will look thoughtfully at article V., he will see that the congress of the states — that is to say, the states collectively — is to propose amendments, and each state is to "ratify," *i. e.* "ordain" — thus laying the additional federal law on her members, citizens or subjects. Let it be kept in mind that government, including the making and administering of constitutions, is mental and functional action; and that mind must dwell in some body, and act through organs, while, as all functionaries are oath-bound, they must belong to one of two classes, the perjured and the unperjured!

The Same States made both Federal Compacts. — Article VI. provides that the debts, etc., shall be as valid against the united states under this constitution, as under the confederation; and that the constitution, and the laws made in pursuance of it, and the treaties, "shall be the supreme law of the land; and the judges in every state

[1] The phrase "a republican form of government" obviously means a republic, in contradistinction to a monarchy or aristocracy; a government of the people by themselves, no matter what form they choose to be organized and to act in. "Each state retains its sovereignty" was the solemn agreement and pledge of faith of all the states, in the constitution of 1778. "Every state in this union" exercised this sovereignty, or right of self-government, till the full and entire formation of the present union, and hence till after the present constitution was "ordained and established." Hence it was 13 sovereignties that "ordained and established," and hence the above clause can but mean that *each state is guarantied by all* in the enjoyment of the said sovereignty, or the right of self-government. It is a pledge of faith of all to each; that she shall be "*free*" in will, "*sovereign*" in will, and "*independent*" in will. And the very essentials of a republic are "freedom, sovereignty and independence," in mental powers or faculties — *i. e.* in perception, reason, judgment and will, to be exercised in government; and these distinguish the state from the province or county. The will of a republic, or commonwealth, or state, *must remain, in all things above her institutions of government,* whether general or local — federal or state. It is this alone which makes her a free state or republic!

shall be bound thereby . . . ;" and all officers, both of the federal and state governments, are to swear "to support this constitution."

The above words, "*constitution*" and "*confederation*," evidently refer to the *instrument* used — "the united states" being the identical and absolutely unchanged parties "*under*" both; but with great unfairness, Story and Webster refer to this article in proof of a change "from a confederation to another system" of government, which is not a confederation, and which they say is a constitution! and furthermore, Webster absurdly says "the constitution is a government proper," as if the *instrument*, and the *government* under it, were the same political entity! He might as well have said, a constitution is what is constituted!

The Instrument says the States are the Parties. — While all the expounders of the Massachusetts school positively assert that the people, as a nation, made the constitution, and are the constitutents of the union, the "deed" itself as positively proves the contrary, by showing the states to be the sole parties to "the union of states" called "the united states." Let us see. Keeping in mind the actual naming of the states in the first article, and the constant recognition of them through all the provisions thus far quoted, let us bring to view Article VII. This article, the full force of which does not seem to be appreciated, prevents the possibility of honest controversy; for it is absolute and decisive proof of the *states* being the *sole parties* to the instrument, and hence superior to it in every possible respect, as well as sovereign over the government provided for. It reads as follows: "The *ratification* of the conventions of nine *states* shall be sufficient for the establishment of this constitution, between the *states* so ratifying the same."

Unquestionably, then, 1st, that which is to establish, or suffice for "*establishment*," is "*ratification;*" 2d, "*states*" are to "*ratify;*" 3d, therefore, "the *states*" are to "*establish*" the constitution and government.

No question can arise that conventions were to declare the sovereign wills of states, for the language is, "between the states so [*i. e.* by conventions] ratifying the same."

And we must keep in mind, too, the character in which the states acted, until the establishment of the constitution was completed — that of sovereign states. See the second article of the "federal constitution," which was, in 1788, or perhaps on the 4th of March, 1789, superseded by the present one.

In order that we may now and here fully appreciate the gross error of the Massachusetts school, let us exhibit the preamble and Article VII. in juxtaposition — keeping in mind the *naming of the states*, and

their recognition throughout, as well as the fact that "united" is merely an adjective: "We, the people of the united *states* . . . do *ordain and establish* this constitution. . . . The *ratification* of the conventions of nine [of the said] states shall be sufficient for the *establishment* of this constitution between the states so [*i. e.* by conventions] ratifying the same." It is certain, then, that several states, and not a nation, "established" the system, and remained the sovereigns of it.

The "Executed" "Deed." — To give a correct idea of the constitution as a completed instrument, binding the parties — whether in law or in faith, it matters not — it should, as above shown, be published with the names of the states, and the expressions they used in ratifying and ordaining — just as should any other deed, compact, or instrument whatever. Who ever before heard of a completed contract, or "executed" "deed" being published — with the intent of showing it as such — with the names of the lawyers who drew it up, but not the names of the parties? How would such a document look in court as the basis of a suit against a party? Nay, more, how does it look when cited to tell its own history and character? When Mr. Webster asked, "What does it say of itself?" the last thing in the world to serve his purpose was its answer!

It is now evident that to get a complete idea of "the constitution of the united states," the instrument, the names of the ordainers, and the ordaining words, should be presented together, in a pictorial representation, as it were, just as is done above [*ante*, p. 139]. The acts of ratification undoubtedly vitalize the instrument. Suppose courts did not take official cognizance of the constitution, and it were permitted to be denied that it was law in a given state, the act of ordaining or adopting would be indispensable to show its "establishment" in her territory, and over her people. There is, as to any given state, but one *ratifying, ordaining, or establishing* act in existence. Nobody ever heard of any other than the act of ratification.

The Compact was "done" only by States. — Instead of the constitution being "done" by the convention of 1787, this body was composed of mere agents of the states, and was under special instructions from them to devise a plan, and report it to congress, to be sent by that body to the respective states for their absolute decision, — each for herself, *pro* or *con*. Each, through her legislature, called her convention which her people elected. Each held it in her own time, and at her own place; and each had the universally conceded right to reject, and two of them did so. All finally ratified; three in 1787, eight in the different months of 1788, one in 1789, and the last in 1790; each convention by vote declaring the will of a corporate body, a sove-

reign commonwealth. The convention of 1787 had simply "done" what would have been waste paper, but for the life and validity, which was "done" to it by these thirteen absolutely sovereign wills. By these wills, and by them only, "the constitution of the united states" was "done," the federation formed, and the government "established."

The statement of Daniel Webster, in his speech of 1833, places this matter beyond controversy: "Until the constitution was ratified by nine states, it was but a proposal — the mere draft of an instrument. It was like a deed drawn but not executed; . . . it was inoperative paper; . . . it had no authority; it spoke no language."

The constitution contains no sign of any other theory than the one herein set forth; and no leading father can be cited in opposition to it. The "powers" of the instrument must be *delegations* of states; the restrictions on states must be their *agreements;* the government must be their *creation;* the administrators of it must be their *electees* and *agents;* all "the people" must be their members, citizens, and *allegiant subjects;* all the *voting authority* and *suffragists* of the country are exclusively *theirs;* the only *creating, ordaining, delegating, granting* and *owning* authority, the instrument shows to be *theirs;* and, in short, the states are recognized and referred to everywhere, as the be-all and the end-all of the system.

The union of states is simply a voluntary association of sister republics. A change to involuntariness, or in other words, to an indissoluble union, cannot be made without destruction of the *right* of self-government, — the very thing that characterizes a republic, and the degrading of the state to a province. And the imperialism or "absolute supremacy" of "the government," over allegiant states, exercised in keeping the states together against their respective wills, involves perjured usurpation and flagrant treason, on the part of federal officials.

In reflecting on this subject, it is well to keep constantly in mind these facts: the federal government was created and placed over citizens, by the acts of their respective states; and each state, until she had fully deliberated, and, by adopting the constitution, had become a party, was acting in the character agreed on by all, in the solemn league and covenant then subsisting, to wit: "*Each state retains her sovereignty.*" No power to constrain her will did or could then exist. Only a *voluntary federation* of sovereignties was possible; and it was formed.

It is also well to remember that, at the making of the union, states occupied all the country, and included all the people, and governed both, exclusively by their will, and hence left no persons or territory

to make a nation of. "The people" had no organized or political existence or capacity to act in political government, except as states.

Only a Federation was possible. — In the great work before them, the fathers had little or no opportunity for high creative or organizing statesmanship. The entities or materials to build with, were all matters of fact, pre-existent and perfect; the main conditions were all forewritten; and natural logic carried the architects, with the inexorableness of Divine decrees, to a federation. Neighboring, kindred, republican and friendly societies, each free and sovereign, and all with cognate principles and mutual interests, were to associate, to preserve themselves, and the precious rights of their members. They could but plan through agents, and themselves vitalize the plan. So that if Hamilton, Morris, Wilson, Washington, and others, really did wish — as some assert, though without proof — to consolidate or nationalize the states,

"They builded better than they knew!"

And they afterwards confessed that such purpose, if ever held, was not accomplished; and declared that a federation of sovereign commonwealths was actually made! [Part I., Chap. VII.]

PART III.

FALLACIOUS EXPOSITION.

" . . . full of subtile sophismes which doe play
With double sences, and with false debate."

FAERIE QUEENE.

PART III.

FALLACIOUS EXPOSITION.

CHAPTER I.

CHARGES AND EXPOUNDINGS IDENTICAL.

THE false charges, made by the anti-federalists to defeat the constitution, though promptly met and decisively refuted, were subsequently adopted by the professed friends and so-called expounders of our system, as the true expositions thereof, — a proceeding much like vindicating a man's character, by ascribing to him the evil traits which have been charged by his enemies for the purpose of destroying it.

These were ascriptions of intent and meaning; and though Washington, Hamilton, Madison, and all the rest of the constitutionists declared and conclusively showed — as is indicated in Part I., Chapter VII. — that the intent and meaning were directly the reverse of what was charged, yet most sedulously have the said expounders, during the last half of our century of federal liberty, asserted and taught the false and reprobated theory as the true one!

In so doing, they necessarily entered, and travelled in, the path of sophistry, and committed the flagrant wrongs now exposed.

Comparison of Charges and Expoundings. — I proceed to place the original and untrue charges, and the pretended expositions, side by side, under five heads, so that we can take in at a glance the gross interpretative impositions to which the American people have been so long subjected. The enemies and the expounders both contend that by the present constitution:

1. The states were made into one state;
2. A federacy was changed to a nation;
3. The general government is a sovereignty;
4. "The government" is the final judge of its authority;
5. A state and a county are alike in *status*, and equal in rights.

I. — THE STATES MADE INTO ONE STATE.

Said PATRICK HENRY in the Virginia ratifying convention: "It must be one great consolidated national government of the people of all the states." [III. Ell. Deb. 227.]

For similar views of ELBRIDGE GERRY, see I. Ibid. 493.

Said WEBSTER, in his speeches of 1830 and 1833: "The federal constitution is established by the people of the united states in the aggregate. . . . The union is the association of the people." "It is the people who speak, and not the states."

II. — THE CHANGE FROM A FEDERACY TO A NATION.

Said PATRICK HENRY: "This is an alarming transition from a confederacy to a consolidated government." [III. Ibid. 44.]

Lowndes, Martin, and Lansing maintained the same position. [See Ell. Deb. *passim*.]

Said WEBSTER in his speech of 1833: "All contemporaneous history shows that a change was made from a confederacy of states to another system." And the Supreme Court of the United States have, through Judge Story, declared the same thing. [Gibbon *vs.* Ogden, 9 Wheaton, 1.]

III. — THE GENERAL GOVERNMENT A SOVEREIGNTY.

LANSING, WILLIAMS and SMITH, in the New York convention, and HENRY and MASON in the Virginia one, contended that the constitution is, by the will of the people, expressed in the "supreme law" clause, placed above the states; and that the general government can therefore control every power that would impede its operations. [II. Ibid. 374, 377.]

WILLIAMS said: "Congress is the highest power in the government." "Whatever they judge necessary for the proper administration of the powers lodged in them, they may execute without any check or impediment." [Ibid. 338.]

Said WEBSTER in his speech of 1833: "This constitution," etc., "is the supreme law of the land." "So far as the people have expressed their will in the constitution, so far state sovereignty is effectually controlled."

See next point for expressions of Webster, making fuller the accord with Williams. See also quotation from Curtis under the next point.

The federal Supreme Court have recently said that the states *submitted* themselves to the *dominion* of a government, etc. [Cruikshank Case, 1876.]

IV. — THE GOVERNMENT THE FINAL JUDGE OF ITS AUTHORITY.

Said LUTHER MARTIN: "By its [*i. e.* the government's] determinations every state must be bound." [I. Ibid. 380.]

Again: "All courts, whether federal or not, would be bound by oath

Said WEBSTER, in his speech of 1833: "The government of the united states does possess, in its appropriate departments, the authority of final decision on questions of disputed power."

to give judgment according to the laws of the union."

Said SMITH, in the New York convention: "The general government has moreover this advantage: all disputes relative to jurisdiction must be decided in a federal court." [II. Ell. Deb. 332, 378. See also Lansing, p. 354.]

It was claimed generally by the enemies, that the general government was to arbit finally on all questions concerning jurisdiction.

He also said in the same speech: "It rightfully belongs to congress, and to the courts of the united states, to settle the construction of this supreme law in doubtful cases."

GEORGE T. CURTIS, in his argument in the Dred Scott case, Dec. 18, 1856, said: "Congress is . . . the absolute, supreme, and final judge of what the constitution has committed to its political discretion."

V. — A STATE AND A COUNTY EQUAL IN RIGHTS.

Said TREDWELL in the New York convention: "The sole difference between a state government under this constitution, and a corporation under a state government, is, that a state being more extensive than a town, its powers are likewise proportionally extended, but neither of them enjoys the least share of sovereignty." [Ibid. 403.]

Many extracts like this could be given from the contemporaneous foes of the constitution.

Said LINCOLN, after he was elected to the Presidency: "In what, on principle, is a state better than a county?" His contention was that states had "no status or rights," but those given to them in the national constitution; and that in rights, states and counties were alike.

WEBSTER, in his speech of 1833, said substantially the same thing, viz.: that "state sovereignty is effectually controlled" by the government.

The dictum of the federal Supreme Court heretofore given, is *idem sonans* with the above.

"Look here, upon this picture, and on this;
The counterfeit presentment of two brothers."

Let us stop and reflect! Did the American people really adopt the consolidation that they feared, and hated, and scorned so much, that the mere suspicion of it well nigh caused the repudiation of the system? To appreciate the great and general dread of consolidation, or destruction of the commonwealths, let the reader recur to the views of Fisher Ames, and those of Chancellor Pendleton, pages 81 and 110 *supra*.

In justice, however, to pure patriots, I should here say, *en passant*, that Henry, Mason, Martin, Lowndes, Yates, Lansing, Gerry and others, were opponents of the constitution, because they were friends of liberty, which they thought or feared the system endangered. Their idea was, that it might reduce the commonwealths to their then recent provincial condition, and make the revolution nugatory.

The Federal simulacrum. Expositions, thus originating, necessitated the misstated facts, the abuse of logic, and the perversion of language, of which sophistry is composed; and finally became formulated as commentaries, judicial decisions, *obiter-dicta*, party-platforms and so-called constitutional arguments, through which *media* alone the federal instrument was seen, — the result being virtually a spurious constitution.

And under the teaching and lead of politicians — who as a class have become the greatest enemies of liberty — the people actually turned away from the real system, and the golden words of the fathers, as well as the truths of political philosophy; and the very *opposites* of them all became "public convictions" [for this phrase see quotation from Mr. Curtis in the opening of the next chapter]. Perversion, for gaining and effectuating what the constitution denies and prohibits, has been so long habitually practised, that a concordant usage has gradually supervened, and the precious compact is hidden by a *simulacrum!*

The Sheik al Gebel. — Hassan Sabah, the founder of the order of Assassins — commonly called the "Old Man of the Mountain," who flourished near the shore of the Caspian in the 11th century, "composed for his *dais* or initiated, a catechism consisting of seven heads, among which were implicit obedience to their chief; secrecy; and the principle of seeking the allegorical, and not the plain sense of the Koran, by which means the text of that book could be distorted to signify anything which the interpreter wished." [I. Univ. Hist. 240. Encyc. Brit. *verbo* Assassin.]

In the formation of the union, and for many years thereafter, Massachusetts held the first place as the exemplar of institutional liberty, and the representative of statehood. But to the grand old mother came degenerate sons — men who, like the Sheik al Gebel, founded an exegetical system to distort the plain sense, the evident purpose of the constitution, so as to make it provide for a *nation of provinces*, instead of a *confederacy of states*, — the central power of the former promising advantages to sections and classes, as well as personal gains, which a compact among sovereign, equal, watchful, and jealous states, covering the actual points contemplated, and leaving out all others, with strict construction and faithful execution of powers, would never permit.

Judge Story's Relation to these Perversions. — As headmaster of the Massachusetts school, Judge Story succeeded Nathan Dane, who, after having striven with others to prevent the adoption of the constitution, revived the charges they had made against it, and foisted them upon it as expositions.

Whether Judge Story was his disciple and follower in this matter, I am not prepared to say; but he quotes Dane with approval, and neglects, or fails to quote, all the advocates of the constitution, both of his own state, and elsewhere, save such as suit his purpose. Why does he confine his citations of contemporaneous evidence to Dane, Henry, and other known enemies? Why does he not cite the instructive debate of the ratifying convention of Massachusetts? Why does he not quote from the other debates, — say those of New York, Pennsylvania and Virginia? Why does he nearly ignore the important parts of the Federalist? Why does he not quote, fully and fairly upon the points he makes, from Washington, Franklin, Hamilton, Madison, Livingston, Patterson, Wilson, McKean, Coxe, Dickinson, Pendleton, Randolph, Nicholas, Corbyn, Marshall, Davie, Iredell, and others? Is it because they are unanimous against his cherished dogma — that *an undivided nation, from the plenitude of its political sovereignty, formed and empowered both general and state governments?* When he resorted to contemporaneous debates, he found *his theory* of the constitution, *only* in the shape of charges made by enemies, for the purpose of defeating it. These he avails himself of as follows: "It is also historically known that one of the objections taken by the opponents of the constitution was, 'that it is not a confederation of states, but a government of individuals.'" [I. Story Com. § 356.] By recurring to the text the reader will see (what the word "also" indicates) that Judge Story introduces this as cumulative evidence of the truth of his theory. He plainly admits the theory of the enemies to be his. They charged it to defeat the system. He uses their charges as explanations of it, though they are contradicted and refuted by all the fathers. He quotes Patrick Henry, the most determined enemy of the system, as follows: "That this is a consolidated government is demonstrably clear. The language is, 'we, the people,' instead of 'we, the states.' States are the characteristics and soul of a confederation. If the states be not the agents of this compact, it must be one great consolidated national government of the people of all the states." [Ibid. § 358, note and authorities cited.]

Now, here is a professed friend and expounder of the constitution, predicating of it precisely the assertion made — as a charge to defeat it — by its most bitter enemy; and quoting the statement of that enemy to prove the correctness of his exposition. Nay, more, he ignores or suppresses the volumes of opposing statements made by the advocates of the constitution, and fails to state that it is also "historically known" that the triumphant refutation of these charges of Henry, Martin, Lowndes, Dane, and others, alone saved the constitution from overwhelming defeat; and furthermore, that these charges operated

as warnings to the people, and induced them, in their state conventions, and everywhere among themselves, and through the press, emphatically to repudiate (as their deputies had done in the convention of 1787), every idea of a national government, or a governmental sovereignty; and, moreover, to make the 9th, 10th, and 11th amendments, to prevent the possibility of these curses ever supervening.

Probable Reasons for Judge Story's Error. — It is known, however, that Judge Story did not originate these dogmas; and it is conjectured that without that close research and profound thought that so momentous a subject required, he adopted the views and copious citations of Dane, than whom there was no abler lawyer or more competent investigator. Moreover, from 1811 to his death in 1845, Judge S. was a member of the federal Supreme Court, which, being interested, generally favored the idea of a strong, self-perpetuating government, and leaned to national views. So that, besides being prejudiced, when, in the era of perversion — say from 1830 to 1835 — the said dogmas came into prominence as a system, he was engaged in judicial, professorial, and book-making labors, and hence was compelled to remit the research and argument to sustain the new exegesis, to Webster and Jackson, who did not investigate, because, like themselves, the champions of the commonwealths merely assumed the premises of their arguments. Both parties needed to be driven to industrious research for the facts of the case!

Were the Motives worthy of the Occasion? — It seems to me that all the contestants cared more — as is the case with partisans generally — for keeping or getting power, for gaining material advantage, or for gladiatorial triumph, than for basing our polity on the deep and earth-wide rock of truth, and measuring it with the mete-wand of Eternal justice. They cared more for victory than for right!

CHAPTER II.

WHO MAKES "SUPREME LAW."

I WILL now proceed to take up, *seriatim*, and test the truth and the constitutional principle of the leading dogmas, or so-called interpretations of the "Massachusetts school."

A conspicuous neutral journal, a few years ago, mentioned the fact that the ——— Railway Company of New York had so contrived a book, that their visitors, in registering, unwittingly signed a memorial to the Legislature for a charter, subsidy, or some other grant to the company; and remarked that "this neat little trick is worthy of the best minds ever produced by Massachusetts."

As to politicians they are alike everywhere, and that state is by no means peculiarly deserving of this fling. All of them trick for party or personal gain; and so degraded is partisanship nowadays, that even the most sacred principles of the constitution are subjects of compromises, adjustments, platforms, party legislation, etc. In principle the neat little trick is like some of the so-called interpretations I have to expose, just as the Thracian robber's acts were like those of Alexander the Great. But the difference in degree, if not in respectability, is vast. The former will ever remain anecdotical, and too little to be worth authenticating, while the expoundings of Dane, Story, and Webster, and the results thereof, will live as long as history itself. Mighty armies rallied upon their phrases, and marched to the music of their sounding words. At their bidding hundreds of thousands were slain, wide regions desolated, and states reduced from freedom to the most abject bondage of provinces.

I will attempt no allotment of credit among the above worthies. George Ticknor Curtis, the biographer of Daniel Webster, claims all the glory for his hero, as follows: . . . "It is to him that we are to trace that great body of public convictions, which, ten years after he was laid in the tomb, enabled the government of the United States to draw forth the energies of a people who would never have gone through the late civil war without those convictions. . . . He knew well, that if the issue did come in this terrible form, he had prepared

the intellect of his country, with that which could alone justify and support the efforts that must be made. He knew always that his own fame was completely identified with the doctrine that regards the constitution, not as a *compact*, but as a *law*." The italics are in the text.

"What is our System?" is Matter of Fact. — Common sense would say that the question whether our general organism is "united states," or an undivided nation; a "union of states," or a union of persons, is one of fact, to be settled by the constitution itself; and in cases of doubt, by historical evidences of intention. But the expounders, to accomplish their ends, set up before the sacred instrument a screen of what they call "interpretation," or "commentary," which is composed of untruths, misstated facts, garbled quotations, and sophistical arguments; and thus produce the said "public convictions."

The constitution was established, and its character was fixed, when nine states had ratified it. That character was a matter of fact and technical description. But no question of interpretation could properly arise, till after the election and organization of the government; and, even then, not till the legislature, executive, or judiciary should find, involved in a case before them, some doubtful provision, phrase, or word, to be interpreted according to accepted rules, for the purpose of ascertaining the intention of the ordaining power in using it. [See Part I., Ch. VIII.]

Proceeding now to show **how the "Public Convictions" were produced**, and to expose the untruth and sophistry of the leading so-called interpretations of the Massachusetts school, I notice *en passant* the above expression of Mr. Curtis, that Daniel Webster's "fame is identified with the doctrine that regards the constitution not as a *compact*, but as a *law*."

The instrument is *both a compact and a law*. It purports to be, and is, A COMPACT because it is to be adopted by separate ratifiers, they all being pre-existent and complete states (each of them acting with its own will through a convention); and their *ratifications* are declared to be "*sufficient for the establishment* of this constitution;" and, secondly, *it calls itself* A LAW — "the supreme *law* of the land."

In the third place, the instrument is a CONSTITUTION of a governmental agency. I doubt if any one understands the instrument, who does not view it in this threefold aspect.

Aside from the constituting idea, it is, like a treaty between or among powers of Europe, both a compact and a law, it being the latter to the subjects of each power, even without a declaration to that effect. The constitution itself calls a treaty (which is a compact) "the law of the land." [Art. VI.]

So that Mr. Curtis' distinction is worthless, both as to the fame of Mr. Webster, and as "that which could alone justify and support" our unrepublican war. But let us pass to

INTERPRETATION No. 1. — THE NATION ORDAINED.

To prove that the federal constitution is made by, rests upon, and derives its authority from, the aggregate people of the united states as a nation, Nathan Dane writes that the instrument "is, as the people have named it truly, a constitution; and they properly said, 'We, the people of the united states, do ordain and establish this constitution,' and not 'we, the people of each state.'" Judge Story quotes him approvingly, and then says: "There is nothing in the constitution intimating it to be a compact. . . . The language is, we, the people of the united states, do *ordain* and *establish* this *constitution*. . . . *The people* do *ordain* and *establish*, not contract and stipulate with each other. The people of the *united states*, not the distinct people of a *particular state* with the people of the other states. The people ordain and establish a '*constitution*,' not a '*confederation*.'" The italics are Judge Story's. [I. Com. § 352.] Webster expresses himself in a similar manner. [Speech of 1833.] And so does the federal supreme court, Judge Story — the above-quoted "commentator" — being the organ of the court. [1 Wheaton, 324.]

Ignoring or concealing Facts does not destroy Them. — It is unquestioned history, that each and every one of the thirteen original states held a convention, to ratify or reject the federal compact; that, after debate, the said convention did, by vote, ratify it; and that the said convention was elected and empowered solely by the said state, and only acted for her. And moreover, the *will of the state* was invariably expressed by *a solemn instrument.*

Leaving these ordinances of ratification out of the argument did not destroy them. Did the expounders forget that the long debates upon them, lasting two or three years; their final adoption by the states respectively in convention; the congress receiving and declaring them as proof of the establishment of the compact, and as the basis of starting the new government, are indestructible facts in the history and archives of the country? Did they forget that these ordinances show precisely who ordained and established the constitution? Did they forget that these ordinances alone convey life and force from the people to the instrument? And finally, did they forget that these ordinances show that the people acted solely as commonwealths? In looking into this matter, we shall see why the expounders have suppressed these majestic utterances.

Did not the People, as States, ordain? — It is true the constitution contains the words — "We, the people of the united states," and not "we, the people of the state;" but this is not "the whole truth." The phrase in the constitution, and the one in the ordinances ratifying it, both refer to the authority which established the constitution, and must be taken together. It would be absurd to say that the fathers wrote in the pact, that it should be established "between the states ratifying" by convention; and that such RATIFYINGS "SHALL BE SUFFICIENT FOR THE ESTABLISHMENT of this constitution;" recognized that each state could absolutely ratify or reject; and wrote in each ordinance of ratification: "We, the people of the state, do hereby assent to, and ratify this constitution;" and yet, that they intended to provide that *a nation*, and *not states*, should ordain and establish!

It must be noted here, that *the cause* of the constitution is the subject of inquiry, and not the constitution itself. As we have seen, the proof is direct and positive that *the sole cause* was the ordainers of the said ordinances, their thirteen separate wills being expressed in the said instruments, and becoming conjoint or united on the one object — the constitution.

The preamble itself settles the question. It says the constitution was made by "the people of the united states" "for the united states." Itself, then, shows the pre-existent states that the people were. The said "people" had always acted as states. They were organized and capable of acting only as such. All history shows that they acted separately — each with her own will — in federalizing themselves.

Besides, that this seems self-evident, Part II. hereof gives overwhelming and conclusive proof.

The Ordaining Instruments. — If proof of the people's communication of authority to the federal compact, law, and constitution were required, the instrument by itself would not serve. The only expression the people ever made on the said constitution was in the thirteen several instruments alluded to, each of which is nearly like the following, which was passed, after full and solemn debate, in the convention of Pennsylvania, by a vote of 46 to 23: "We, the delegates of the people of the commonwealth of Pennsylvania . . . do, in the name and by the authority of the same people, *assent to and ratify* the foregoing constitution for the united states of America. Done in convention . . . 12th December, 1787." [For all the instruments see I. Ell. Deb. 319–337.]

The first of these ordinances was passed by Delaware, December 7, 1787; two other states acted in the same month; two in January, 1788;

one in each of the months of February, April, and May; New Hampshire, the ninth and complemental state, and Virginia, in June; one in July of the same year; one in November, 1789; one in May, 1790; and Vermont, the fourteenth state to ratify, in January, 1791. It is hardly necessary to say that each state acted of her own motion, in her own time, at her own capital, and through her own convention, with absolute power to ratify or reject. Said Chief Justice McKean in the Pennsylvania convention: "The power of this convention is derived from the people of Pennsylvania, . . . for the sole purpose of ratifying the constitution, . . . or of rejecting it." [II. Ell. Deb. 529.] This was the view of the advocates in all the states. The convention was called by the state, elected by the state, to represent the state; and was to ratify or reject the federal plan absolutely. There was no interference, or even hint from any other state or states, or any nation. The association thus formed was properly considered to be a "union of states," as the constitution phrases it, and was styled "the united states!"

The Compact required the States to ordain. — "*Ratification*," *by* "*the states*," was to be "*sufficient for the establishment* of the constitution, between the states, so [*i. e.* by conventions] ratifying the same:" — these are the very words of the compact. The conclusiveness of this language of Article VII., is hereinbefore noted [p. 154]. It is absolute proof that *the states, as such, were to ordain the constitution;* for it shows, 1st. That "ratification" is to effect the "establishment." 2d. That states are to do the "ratification;" and 3d. That, therefore, the constitution is to be established by and "between the states so ratifying the same." There is not in the constitution, or in contemporaneous history, any hint of any people ratifying, except commonwealths of people, *i. e.* the states. And, as if to make denial impossible, *the states are named* in the very first article of the constitution, as pre-existent historical and geographical bodies, and are recognized and provided for, throughout the instrument, as the sources of authority; and there is no sign that they were in any respect changed — much less degraded to counties or provinces. Nor is there any hint of the abatement of their sovereignty. On the contrary, the record proves that "*each state retained its sovereignty*," and acted in such character up to the very finishing of the federal system [see Article II. of the first federal pact]; and that the fathers themselves contemplated the federating states as continuing unchanged, and as remaining, in the eye of public law, states or nations. Article III., § 2, Amendment XI., and other articles, show that the word "states," referring to Massachusetts, New York and Virginia, means the technical states or nations of the *jus gentium*, just as it does when referring to France or Russia.

The phrase "united states of America" meant just what the phrase "united states of Europe" would have done — an association of sovereignties. "The united states of America" was an association of republics, or of communities, which possessed respectively the absolute right of self-government — *i. e.* sovereignty.

No "People," as such, were to ordain. — But the argument is still stronger; for not only were the states to *ratify*, and, consequently, to *ordain* the constitution, through their respective conventions, but "the people" were not to vote or decide on the constitution at all, and they never did so in any mode, either directly or indirectly. On the contrary, they, as citizens and voters of states, under laws of the states, elected delegates, who, in convention assembled, were, in behalf of the state they were the convention of, to examine and discuss, and then, according to their discretion, *ratify* or *reject* the constitution. Each state, through her own convention, ratified. The constitution was ordained in this way, or never at all, for no other expression of the people's will on it was ever made. May we not venture, then, to call the ordaining instruments ordinances? Mr. G. T. Curtis thinks they are not ordinances, but more like deeds or grants. I shall notice the point hereafter.

Is not the reason now apparent why Story, Everett, Motley, Curtis, and others ignore or suppress the action of the states, and especially the above ordinances? and why, when they are forced to notice the latter, they garble them, as they will presently be shown to have done? If they admit that the states enacted the above instruments, and that thus alone was life and validity given to the constitution, and existence and authority to the government, they admit the entire incorrectness of the counter-statement, which all of them have repeatedly made; to wit, that the nation ordained the constitution, and that, as it is "the supreme law of the land," "state sovereignty is effectually controlled" by it.

CHAPTER III.

FALSE EVIDENCE OF ESTABLISHMENT.

INTERPRETATION No. 2. — The Constitution National.

IF one of the expounders be asked for proof of the "establishment of the constitution," he asks in return, "What does it say of itself?" [Webster,] and immediately answers from the preamble: "We, the people, . . . do ordain and establish," and he further says this means "the people as a nation." This deception necessitates various others, which are to be exposed herein.

Now, it is of vital importance that the people should understand the source of constitutional authority; or, in other words, who it was that effected "the establishment of this constitution," and was the source of its existence and power. There must be some precise and conclusive evidence on a subject of such paramount importance. And yet, on this very subject, the said expounders have most industriously, though perhaps unintentionally, taught false ideas, and caused confused notions in the popular mind. If they had really desired, in good faith, to make a truthful pictorial impression, they should have affixed to the compact the names of the states and their ordaining words, — these indicating precisely what gave life to it. [See Part II., Chapter XIII.] As far as it goes, the constitution is the evidence of whatever system was established, *i. e.* whether it was federal or national. But something more is necessary. It would be pettifogging folly to offer an instrument as evidence of the parties to it, or of the extent of their obligations, which lawyers had, under instructions, drawn for the said principals, and had signed, — not to adopt, but to authenticate and recommend as their plan, — but which the principals had never signed or sanctioned. Such instrument would simply show what the plan was, and who devised and recommended it for adoption, but not bind the principals contemplated. Now, how is the execution and binding force of such instrument to be shown? Simply by proving the acts that gave it existence and validity. If the constitution were not of the class of political facts, of which the courts take cognizance without proof, the only possible evidence of its being in force in any given state, would be that state's act of ratification.

Proving this would be, in legal effect, like proving, by the party's signature or otherwise, the execution of any other instrument.

The new System "done" only by States. — Now we prove each ratifying ordinance as an absolute fact. We equally prove, as a fact, that each was "done" by and for a state. Hence, as no other source of life and power is shown, we establish it as a fact that the constitution was "*done*," *i. e.* "*ordained and established*," by thirteen *states*, as their frame of general government, and as "the supreme law of the land." This precisely accords with the provision of Article VII., that the "ratifications" of "nine *states*" are to "be sufficient for the establishment of this constitution, *between the states* so [*i. e.* by conventions] ratifying the same." No "ratifying" or "establishing" but that of states, that is, communities of people, could have been contemplated. It was thus that the "deed" — to use Daniel Webster's phrase — was to become "executed." It was thus that the thirteen "moral persons," called states, were to form the republic of republics — "the united states."

It is absolutely untrue that the convention of 1787 represented, and acted for, a nation, in "making a distribution" of the said nation's "powers between *their* general government and *their* several state governments;" and "*reserving to the states*" the rights and powers they were thereafter to possess. The states *made* "the constitution of the united states," *created* the government, *delegated* its only powers, and *reserved* all not delegated; and necessarily the only restrictions upon states are *their voluntary ones*. They are self-associated bodies, — "united states."

All the history and records of the country, without the exception of a line, word, or syllable, aid in proving the last proposition, while no line, word, or syllable of the said history and records can be produced to prove that a nation established our constitution of general government!

INTERPRETATION No. 3. — Judge Story's New Article.

If we judge from what the expounders have added to the constitution, their "construction" means building or fabricating. The ingenuity of the above-named commentator has given us a most important addition.

When on the 17th of September, 1787, the deputies of the American states, in convention, published the plan for "the federal government of these states," they affixed their signatures, by states, in order to authenticate the plan, and to recommend it. Nobody ever ventured to say, in so many words, that *the convention ordained*, or that it had

any more than mere advisory authority; but the peculiar circumstances of the case afforded an opening for perversion. In his Commentaries, Volume II., § 1856, Judge Story says: "And here closes our review of the constitution, in the original form in which it is framed for, and adopted by, the people of the united states. *The concluding passage of it* is: 'Done in convention, by the unanimous consent of all the states present, the 17th day of September, 1787.' . . . At the head of the illustrious men who framed and signed, stands the name of George Washington." This is a sample of Judge Story's exposition; and the phrase I have italicized, as well as the impression made, is entirely without foundation. Nobody — not even Judge Story — could prove that the words quoted were "the concluding passage of the constitution!" [See V. Ell. Deb. 536, 555, 564.]

Sheep follow Bell-Wethers. — In all American books the constitution is invariably published as "Done in convention, by the unanimous consent of the states present;" and the names of the deputies are affixed. It is published thus — strange to say — in the book of Mr. A. H. Stephens. The people are thus pictorially impressed with the idea, that then, there, and by those men, the constitution was "done." [See Part II., Ch. XIII.]

Men are naturally gregarious, and each flock must have a bell-wether. When a man like Story becomes accepted as a leader, his *grex discipulorum* thenceforward seem to think they need but follow and swallow. Many pages could here be quoted from men who think, and many more from that immense class who mistakenly think they think, to show a very general adoption of the above false idea of the origin of our federal system; for example, the New York World of April 8th, 1864, said, "The constitution was a *federal compact, done in convention* by the unanimous *consent* of the states present." The so-called Massachusetts school, generally, pretend to regard the "consent" referred to, as the basis of the federal constitution, though they know the function of the convention was merely to make a plan; and that the real and only consent, and vitalizing force, was given by states, and through the separate conventions of these bodies. And they intimate, rather than broadly assert, that the people of the states, by ratifying, consented to take place and rank, as fractional parts of a nation, much as companies, by order, merge themselves in a regiment or divisions in an army. Indeed, Daniel Webster, in his speech o 1833, and George T. Curtis, in his letters to the New York World, in 1867, speak of this very consent, as the forming of a national society b social compact. Such is the "interpretation" of the "school!"

The Blind leading the Blind. — This seems to be not only th view of Story, Webster, and Curtis, but it is the idea of Buchana

Lincoln, Andrew Johnson, Reverdy Johnson, Robert J. Walker, Geo. H. Pendleton, *et omne genus*, as well as of all those "black spirits and white, red spirits and gray," that "mingled" in the Philadelphia convention of 1866. To show how these able and generally conservative men, being deluded themselves, mislead the people, I quote the following from a speech of the last-named — who is one of the most distinguished of the *alumni* of the Massachusetts school — at Bangor, Maine, in 1868: "I bow myself in reverence before the form of government which has bound these mighty states together, and which has reconciled their different and discordant interests into the harmony of one people, and one government. *The men of 1787* were self-denying men. *They* feared consolidation of power. *They* put behind them all the allurements of imperial pomp. *They* denied themselves the fascinations of a strong government. *They* contented themselves with the simplicity of confederation. *They committed* to the federal government inter-state and international affairs. All the rest, *they reserved* to the states themselves. Within this narrow sphere, *they made* the federal government supreme. All beyond remained to the *unimpaired sovereignty* of the several states." The italics are my own.

These are substantially the views of the most of the conservative men and presses of the Massachusetts school. Nay, more, there is hardly an inharmonious buzz in the whole hive. The "public convictions," caused by their teachings, seem to be inveterate, that some high authority, other than the states, distributed powers to the general and state governments; giving supremacy to the former, so that to the extent of its powers, "state sovereignty"— to use Webster's phrase — "is effectually controlled." All this is not only sophistical, but untrue, and so fully contradicted by our history, that it cannot be innocently repeated by one who is not ignorant of the subject.

INTERPRETATION No. 4. — The States not Named.

That the states are not named in the constitution is a common assertion hard to account for; though, in politics and war, fictions are often better for temporary use than facts; and in 1861, Everett, Motley, and others evidently saw that the "public convictions" needed strengthening by statements not strictly historical.

I shall simply quote the gentlemen named, and then quote the constitution, leaving the reader to decide between them.

Mr. Everett said [see I. Rebellion Record, 9] "That instrument does not purport to be a compact, but a constitution of government. It appears in its first sentence, not to have been entered into by the

states, but to have been ordained and established by the people of the United States, for 'themselves and their posterity.' *The states are not named in it;* nearly all the characteristic powers of sovereignty are expressly granted to the general government, and expressly prohibited to the states," etc.

John Lothrop Motley, since Minister to England, in a letter to the London Times in 1861, on "the cause of the civil war," [I. Reb. Rec. 209] said: "It was not a compact. Who ever heard of a compact to which there were no parties? or who ever heard of a compact made by a single party with himself? Yet *the name of no state is mentioned in the whole document,*" etc.

Each State put her Name in the Compact. — Federal Constitution, Art. I., § 2 — "Representatives and direct taxes shall be apportioned among the several states. . . . The number of representatives shall not exceed one for every 30,000, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose 3, Massachusetts 8, Rhode Island 1, Connecticut 5, New York 6, New Jersey 4, Pennsylvania 8, Delaware 1, Maryland 6, Virginia 10, North Carolina 5, South Carolina 5, and Georgia 3. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies."

We can now see why the "expounders" should get out of the loose preamble or preface, into the constitution itself. The very first article convicts them of two cardinal and flagrant mistakes. 1st. That the states are not named in the constitution. 2d. That the members of the lower house of the congress are the representatives of the people at large, *i. e.* of the nation, and not representatives of the political bodies called states, in which form alone "the people" existed, and could politically act. This matter will be discussed elsewhere.

CHAPTER IV.

SOME SAMPLES OF "SOPHISMES."

INTERPRETATION No. 5. — The Supreme-law Clause.

THE climax of all the Massachusetts school's arguments of "interpretation," is, that "This constitution shall be the supreme law of the land." If one ask — whose "constitution" or whose "supreme law" is it? Who made it? Whose "land" is referred to? Over what subjects is it "the supreme law"? the ready answer is another segment of the sophistical circle, viz., "'We, the people' — as a nation — 'do ordain and establish this constitution.'"

It is obvious that all "the people," at the time of forming the constitution, were states. The association continued to be "the united states," as it had been under the previous constitution. "The people" remained "the people of the united states," the instrument of union, "the constitution of the united states," and the general governing agency, "the government of the united states." These are the very phrases of the constitution. They plainly mean that "the people," "the constitution," and "the government," belong to the said states, — "the united [or associated] states."

The people chose to be, and remain, organized as states; and they were incapable of political action in any other form. Being republics, sovereignty, or the right of self-government, necessarily resided in each. As Wilson, of Pennsylvania, and other fathers, explained: "the sovereignty is in the people before they make a constitution, and remains in them after it is made."

As republics, they intended to govern — not be governed. Of their constitutions, or frames of government, the federal one is "the supreme law of the land." It is the "law" (*i. e.* the expression of the will) of the conjoint law-makers, — not above *them*, but above their subjects, and their agencies of government. Their constitution can be no law over them, for as to them it has no sanction or means of enforcement. A law without a sanction is no law.

Many politicians seem to have vague notions on this subject. Hon. A. H. Stephens, in his "War between the States," p. 40, says: "The

exercise of supreme law-making power, even over the authority delegating it, may be legitimate so long as the delegated power is unresumed." Is there ever such an "exercise"? Mr. Stephens ought to explain, with illustrations.

The Fathers' Idea of "the Supreme Law." — The plain and simple idea of the fathers was this: The states, being constitutors of the constitution, ordained that where conflict should arise between this and any other law of the land, this should be supreme, — all laws being expressions of their wills; *federal laws* being made by their *joint will*, and *state laws* by their *several wills*.

Said HAMILTON — meeting this very claim of Messrs. Webster and Story — then, a charge, by enemies, of danger in the clause: "The word 'supreme' imports no more than this, that the constitution and laws made in pursuance thereof, cannot be controlled or defeated by any other law. . . . But the laws of congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme, or binding. In the same manner, the states [he meant the state governments] have certain independent powers, in which their laws are supreme." Again, he said: "The laws of the united states are supreme, as to all their proper constitutional objects. The laws of the states are supreme in the same way." [II. Ell. Deb. 362.]

Said JUDGE IREDELL, in the North Carolina ratifying convention, about said supreme law: "What is the meaning of this? . . . It is saying no more than that, when we adopt the government, we will maintain and obey it; in the same manner, as if the constitution of the state had said, that when a law is passed in conformity to it, we must obey that law. Would this be objected to? Then, when congress passes a law, consistent with the constitution, it is to be binding on the people. If congress, under pretence of executing one power, should, in fact, usurp another, they will violate the constitution." [IV. Ibid. 178–9.]

Said WILLIAM R. DAVIE, in the same convention: "Every power ceded by it must be executed. . . . It is not the 'supreme law' in the exercise of a power not granted. . . . To vest the federal government with power to legislate, and then deny supremacy in the laws, is a solecism in terms." [Ibid. 182.]

JUDGE PARSONS, afterwards the celebrated chief justice of Massachusetts, said the same thing in substance, in the ratifying convention of that state: "*an act of usurpation is not obligatory; it is not law.*" [II. Ell. Deb. 94.]

It is needless to quote further, for these were the opinions of all. The truth is, the supreme-law clause of the constitution was a mere emphasis of a fact or principle, — the enunciation of a truism. Any

and every law is supreme, in the sense intended, when there is no conflicting law above it — even, for instance, the order of a parent to a child, or a master to a servant. Any rule, within an authorized sphere, and on a rightful subject, is supreme, from the decree of an autocrat down to the ordinance of a town council. And, in the very nature of things, the compact of the states overrides their home and peculiar laws, even without the phrase I speak of; for the very engagement of the parties, to which their faith is pledged, is that no one of them shall nullify, defeat, or even interfere with, what all, for the common good, have agreed on. If the nations of Europe were to federalize themselves to-day, each would proceed to-morrow to make every home and local law conform to the treaty. The idea is as old as international agreements, that a state's compact with other states is "the supreme law of the land" in her territory; and all her courts, upon finding any other law conflicting with it, would necessarily and dutifully decide *it* to be "supreme."

Moreover, it is absurd to suppose the commonwealths created a government and delegated to it authority and means to destroy them. Nay, more, the fathers unanimously excluded from the constitution all power and means of contending against the will of a state, saying that the coercion of a state was "visionary and fallacious" [Madison], "one of the maddest projects ever devised" [Hamilton], and equivalent to "war" [Randolph, Ellsworth, and others], and all agreed that it was inconsistent with the *voluntary union of states* which was aimed at by all: and finally, if this "supreme law of the land" is over the states, individually and collectively, why did Messrs. Seward, Greeley, Everett, and others, admit the want of power, in the general government, to coerce the states? and why are so many misstatements and sophistries needed to strengthen the "public convictions," and give ease to the public conscience on this subject?

The Expounders prove too much. — If the constitution is a law over one state, it is over all, — "the united states," even, being subordinate; and Lincoln was right in his expression that "the states have no *status* or rights" except those "*reserved to them* by the nation, in its constitution." In other words, the stupid states have put their "supreme law" over, and thereby subjugated, themselves: and given their own citizens and chosen agents full power to coerce their obedience.

INTERPRETATON No. 6. — Partly Federal and partly National.

In Article 39 of the Federalist are to be found several little sentences, which have done much detached duty in the great contest —

supposed to be a logical one — as to whether the constitution is a compact or not. The expounders use them to prove that our general polity is partly federal and partly national in character, — the national part predominating; so that, practically, we are a great political unit, made up of municipal fractions, called states but really counties, and that "so far as the constitution goes, so far state sovereignty is effectually controlled." [Webster.] One of these sentences is the heading hereof.

None of "the writers of the Federalist" or other fathers hinted at any nation acting in the premises, or at the states being reduced to provinces or counties. In the article alluded to, Mr. Madison said, "The act establishing the constitution will not be a *national* but a *federal* act." "Each state" is to ratify, continued he, "as a sovereign body," and is "only to be bound by its own voluntary act." "In this relation, then, it will be a *federal* and not a *national* constitution." He then shows how, in their compact, the sovereigns, as to the certain matters provided for, treat their aggregate subjects as a nation; and concludes that "the proposed constitution" is "neither a national nor a federal one, but a composition of both," *i. e.* it is federal in the establishment of it, but, *pro tanto*, national in operation.

Mr. Madison's obvious meaning was, that the states, as separate parties, each acting with her own will, compacted to establish the constitution, and agreed therein to govern their respective subjects together, as to the general matters the constitution was made for; thus treating them *as if* a nation. And the true idea is, that so far as the federal compact goes, the people are *quasi* a nation — not in political existence, organism, or power, but as subjects of government. It is also true that the constitutors and components of that nation are the states, and that the people of that nation are entirely, exclusively, "and absolutely" the "citizens of different states," and, of course, the subjects thereof.

Articles III., § 2; IV., § 2; and the 11th Amendment, show that there were no citizens of a nation; and Article I. names the states as pre-existent bodies, while the whole instrument contains no hint of their change in name (either proper or technical), geography, organism, or political authority; but, throughout its whole extent, recognizes and provides for them as the parties to it, the actors under it, and the sources of all federal elections and federal power. In short, the phrase — "the united states," makes and ends the whole argument.

The Senate Federal — the House National. — The mixed character is pretendedly inferred from another source. In illustrating it, the expounders allege that the senators are to represent states, but

that "the house of representatives will derive its power from the people of America." "The people of America" are, of course, the nation, — the states being the provinces. The very number (39) in which the above phrase is used, refutes the perverters a thousand times over. But let us ask the constitution itself, whose representatives they are? who they are elected by? and whose power and means they officially use?

1. Article I., § 2, says the representatives are to be "*chosen* every second year *by the people of the several states.*"

2. "*The electors* [*i. e.* the voters] *in each state*" are to be such as the state authorizes. [Ibid.]

3. *Representatives* "shall be apportioned *among the several states*" according to numbers. [Ibid.]

4. "*Each state* shall have at least *one representative.*" [Ibid.]

5. The same article and section names the states, and fixes the number *each state shall* "*be entitled to choose*" till the apportionment.

6. The same article provides for the governor issuing writs of election for filling vacancies in "*the representation from any state.*"

Note also the following, in Article II. § 1: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of *senators and representatives* to which *the state may be entitled* in the congress."

We find, then, that "*each* STATE *shall have*" these agents, and each "shall be entitled to choose" them. Voting powers and eligibility to office are fixed, of original right, by the state, and are confined to her own citizens and members. It is obviously not the people at large, but societies of people, that are to be represented; and it is equally obvious that republics, for federal self-government, are to send representatives, as well as senators, to a *congress of themselves.*

The point of distinction between the consolidated and the federal form is the individuality of states, and their complete independence of will, which we shall always find to have been carefully preserved.

How purely mythical, then, is the national idea commonly taught! Not a line in all American history or records agrees with it. Everything shows the polity to be a federation, *i. e.* "the united states." The instrument evidencing it is properly called the federal constitution. So far, however, as the states have willed that it should be, it is national in operation upon their citizens, and it is national to the outside world. Madison, Hamilton, and all the fathers said the constitution did not attempt to consolidate the states, but contemplated them as absolutely sovereign commonwealths, in league for self-preservation and self-government. [See Part I., Ch. VII.]

INTERPRETATION No. 7. — "RESERVED TO."

The expounders assume — 1. the nation ; 2. the supreme-law dogma ; and 3. the subjection of the states to this supreme law ; and pick little crumbs of comfort, if not support, out of detached phrases, with which their theory is consistent, though it is inconsistent with the constitution and every fact of history, and especially with truth and justice !

The states — said Lincoln — have no "*status*," or "power," but what is "RESERVED TO THEM," in the constitution, by the nation — in other words, no rights but those the nation has allotted to them in its supreme law. Amendment X. reads : "The powers not delegated to the united states by the constitution, . . . are reserved to the states respectively, or to the people :" thus showing that all the powers granted or vested by the constitution are *delegated ;* and that all which the delegators did not put in the constitution, they must have KEPT OUT. This is the necessary meaning of "reserved" in the 10th amendment, and "retained" in the 9th.

Why was the phrase "reserved to," used ? I shall try to show in the proper place, that, (as Livingston, Hamilton, Madison, Marshall and others viewed it,) the people, as commonwealths, were respectively distributing their powers between their home and their federal governments ; and in "reserving" or "retaining" powers and rights they had to reserve *to the state governments*, where many already were or *to themselves*, who owned all the residue. It must be kept in mind that in the common parlance of those days, "state" was convertible with "state-government," as well as with the commonwealth or people.

If it be kept in mind that the states are speaking ; that they are delegating, and they reserving ; that there are, politically, no other people than states, and no other states than people, we shall see clearly that the phrase "*to the states, or to the people*" meant *to the state governments, or to the states.* Of the correctness of this view, New York and other states give conclusive proof. Her language is "Every power . . . which is not . . . delegated to the . . . departments of the government . . . remains to the people of the several states or to their respective state governments, to whom they may have granted the same." [See also App. D. No. 2, and illustration, p. 310 *infra.*]

CHAPTER V.

GARBLINGS.

INTERPRETATION No. 8. — Garbling the Ratifications.

IN his "Commentaries" [Vol. I., § 356] Judge Story says: "It was, nevertheless, in the solemn instruments of ratification by the people of the several states, assented to, as a constitution. The language of these instruments uniformly is, 'we, &c., do *assent* to and *ratify* the said *constitution*.'" The reader will please note the "&c." Judge Story further says, that the language of the conventions of Massachusetts and New Hampshire is peculiar, and he professes to quote it, as follows: "The convention, &c., acknowledging, with grateful hearts, the goodness of the Supreme Ruler of the universe, in affording to the people of the united states, in the course of His Providence, an opportunity, deliberately and peaceably, without force or surprise, of entering into an *explicit* and *solemn compact* with each other, *by assenting to and ratifying a new constitution*, &c., do assent to, and ratify, the said constitution." Please note, in this extract, two cases of "&c.;" also Judge Story's italics. Daniel Webster, in his speech of 1833, [III. Webster's Works 476,] garbles this ratification as Judge Story does, so that the present *exposé* applies equally to him. It is the opinion of some, however, that Mr. Webster was often misled, as to facts, by the investigators he confided in.

And we find the same mysterious and suspicious "&c.," in all the quotations the writers of the school make from the ratifications. For fuller exposure, it is well to bring several to view. E. D. Mansfield, in teaching political *truth* to the young people of our country, says, on page 171 of his "Political Grammar:" "The language of the ratifications is remarkably uniform and remarkably explicit, as to the source whence the constitution receives its authority and force. All the ratifications commence, 'We, the delegates of the people thereof,' and all terminate by making their ratifications in the name of their constituents, the people." This is evidently a studied statement. One or two more will suffice out of many I have before me. During the war, an enterprising American in England, under the auspices of

the United States Legation, got up a "Bacon's Guide to American Politics," for the purpose of preventing the English people and government from sympathizing with and favoring the South, in which "Guide" the same deception is practised, as follows: "All the ratifications commence with 'We, the people,' and all terminate by making the ratifications 'in the name of our constituents, the people.' Thus the states, in their official capacity, proposed the constitution, . . . but it receives its sanction and validity from the whole people, in their sovereign capacity."

And Mr. George Ticknor Curtis, in a letter to Edward Everett, dated June 3, 1861, wrote that "the duly authorized delegates of the people of South Carolina executed an instrument, under seal, declaring that they, 'in the name and behalf' of that people, assent to and ratify the said constitution."

Now, what does "&c.," or the ellipsis, mean, in all these quotations? or, rather, what does it hide? Simply this: it conceals words which completely refute the assertions made, and conclusively prove that the people, *as independent states*, — organized and acting as such, — and not the people *as a nation*, are the parties to the federal constitution, and the sole sources of its authority, and that this instrument evidences a federation of sovereignties. And, if the above writers did not think so, why did they invariably suppress the pith of these ordinances? Indeed, they could not have believed otherwise.

The true Versions. — Referring generally to the acts of ratification, all to be found in I. Elliott's Debates, 319–337, I will copy the ordaining words of two or three of them, so that the reader can see in juxtaposition, the *garbled* and the *true* expressions. Here are the suppressed words, and the very pith, of the ratification of Judge Story's own state: "The convention" [here follow the introductory words above quoted, which the reader must recur to, in order fully to appreciate the matter] do, in the "name and in behalf of the people of *the commonwealth* of Massachusetts, assent to and ratify the constitution for the United States of America." The ratifying act passed by a vote of 187 to 168.

Here is the pith of the act of New Jersey: "In convention of the state of New Jersey, . . . we, the delegates of the state of New Jersey, . . . do hereby, for and on the behalf of the people of the said state of New Jersey, agree to, ratify, and confirm the same, and every part thereof." Passed by unanimous vote.

Here is the substantial portion of Virginia's ordinance: "We, the delegates of the people of Virginia, . . . now met in convention, . . . in the name and behalf of the people of Virginia, do, by these presents assent to, and ratify the constitution recommended, . . . hereby a-

nouncing to all whom it may concern, that the said constitution is binding on the said people." Vote, 89 to 79.

Here are the words of Georgia: ". . . We, the delegates of the people of the state of Georgia, in convention met, . . . do, in virtue of the power and authority to us given by the people of the said state for that purpose, for and in behalf of ourselves and our constituents, fully and entirely assent to, ratify, and adopt the said constitution." Vote, unanimous. All the ordinances are in substance the same; and all contain the word "ratify," referring to the act of the political body, — the state.

What was the Motive? — Now, the purpose of these garblings is obvious. If the perverters had written and printed the suppressed passages, they would have destroyed their theory, for the words suppressed show the states to be the only possible creators and delegators. But, while thus engaged, they often unwittingly recognize these acts of ratification, as conveying from the organized people, *i. e.* the commonwealths, the entire life and strength of the constitution. For example, see the above words of Judge Story: "The people of the *several* states assented to" the said constitution, by "*solemn instruments of ratification.*" This admits all I claim, for no one pretends that the original "*establishment*," *i. e.* the vitality and validity of the pact or constitution, could come from any other source than these acts of nine or more states, spoken through nine or more conventions. An instrument prepared by the deputies of thirteen such parties, which the said parties consecutively and independently adopt, and which contains *their* provisions for the general government of *their* people, must be a federalizing instrument, whether sanctioned by signature, seal, proxy, delegation, convention, commissioners, ambassadors, or any other mode and means of expressing will; and the product of such instrument is necessarily a federation, *i. e.* a union of states. How can any intelligent man, in the face of these facts, innocently assert that our general polity is an association of people as a nation, instead of a society of commonwealths — a republic of republics — "the united states"? What chance have facts, compacts, reason, argument, and the sacred faith of the fathers, against the so-called Massachusetts school, with its command of the press; and where its disciples constantly speak and write such errors as are in the following extract from Motley's letter to the London Times, heretofore quoted from: ". . . The name of no state is mentioned in the whole document; the states themselves are only mentioned to receive commands or prohibitions, and the people of the united states is the single party by whom alone the instrument is executed. The constitution was not drawn up by the states, it was not promulgated in the name of the states, it was

not ratified by the states. The states never acceded to it, and possess no power to secede from it. It was ordained and established over the states by a power superior to the states, — by the people of the whole land, in their aggregate capacity, acting through conventions of delegates, expressly chosen for the purpose, within each state, etc." [I. Reb. Rec. 211.] Every sentence of the above is directly and positively contradicted by the history and records of the country, as heretofore shown, and as we shall constantly see.

INTERPRETATION No. 9. — Garbling the Federalist.

Many instances of this ingenuity on the part of some of the later "best minds of Massachusetts" could be given, but it is presumed the following will suffice. An American politician considers himself quite fortunate, if he can quote an apposite and forcible passage of the Federalist, to prove his contention. In quoting to prove his, Judge Story says: "It is truly remarked by the Federalist (Article 39), that the constitution was the result, neither from a decision of the majority of the people of the union, nor from that of a majority of the states. It resulted from the unanimous assent of the several states that are parties, differing no otherwise from their ordinary assent than its being expressed, not by the legislative authority, but by that of the people themselves." He professes to give the substance, but abstracts what is merely prefatory to the gist of the passage, and leaves off, so as to convey the impression of a national constituency, or the "we-the-people" idea, to prove which is the great end of his argument. Here is what next follows: "Were the people regarded, in this transaction, as forming one nation, the will of the majority of the whole people of the united states, would bind the minority. . . . Each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, the new constitution will, if established, be a *federal*, and not a national, constitution." This is decisive on the very point Judge Story was discussing, and it destroys him completely; and he recognized this by suppressing the passage confuting him, while quoting its antecedent, which seemed to support him. And the careful reader will find that all of Judge Story's arguments and multitudinous citations, on the great subject of "the nature of the constitution," are so delusive, that full examination is necessary.

An Effort of Daniel Webster in this Line. — Mr. Webster also culled expressions and facts to suit his purpose, and failed in accuracy as to contexts and historical explanations. An instance like the above is the following, from his speech of 1833. He asserts that the

writers of the Federalist declare that "the fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE" [the small capitals are his]; and he uses this expression of the said writers, and the immediate context, to refute the idea of pact, and to show that a nation was formed. He did not seem to know that this expression, found in Number 22, refers to the first federation being made by delegative, instead of original, power; and simply meant that the people of the states, and not their legislatures, were to ordain and establish the new pact. He did not seem to reflect that, not only were the people of the commonwealths the only people, but that, as has been shown, they could politically act *only as states;* and that their several absolutely independent acts made them "*united* states," as they agreed to call themselves.

He then goes on to declare, that "the powers conferred on the new government, were perfectly well understood to be conferred, not by any state, or the people of any state, but by the people of the united states." And, finally, he improperly quotes the ratifications of Virginia, Massachusetts, and New Hampshire to prove his view; and then proceeds to say: "Indeed, sir, if we look to all contemporary history, — to the numbers of the Federalist, to the debates in conventions, to the publications of friends and foes, — they all agree that a change had been made from a confederacy of states to a different system." Now, all these statements are unfounded, and the authorities he refers to, flatly contradict him. For instance, "the writers of the Federalist," instead of calling the system a nation or state, in any technical sense, repeatedly characterize it as a "confederacy." [See again Part I., Chap. VII.] Instead of saying the general government rests on the "basis of the consent of the people" as a nation, they say that "each state ratified" "as a sovereign body," and is only "bound by its own voluntary act." [Number 39.] Instead of saying the powers are conferred on the new government by the people of the united states as a nation, they say "the states" alone "delegate" them. Instead of saying the people compact to form a nation, they say "thirteen independent states" are "the parties to the compact," forming "the confederacy." [Number 85.][1] Finally, in direct opposition to all that this expounder asserts, they say "the states are regarded as distinct and independent sovereigns . . . by the constitution proposed." [Number 40.]

With but slight investigation, the expounders could have found

[1] This very article, written by Hamilton, contains the expression, "A nation without a national government is an awful spectacle." This, like the "we-the-people" sentence and others, long did much "detached service" in forming the aforesaid bellicose "public convictions."

numerous proofs like these, covering and deciding the very points of controversy. But their search was — like that of most persons who adopt the theory before they ascertain the facts — only for short and convenient passages to sustain foregone conclusions. And even the so-called "state rights" men of the original states neglect these truths, which sparkle like gems wherever, in the archives and constitutions of the said commonwealths, they look!

CHAPTER VI.

ADROIT SUBSTITUTIONS.

INTERPRETATION No. 10. — Changing Terms and Meanings.

WHEN, in 1861, Mr. Edward Everett was preparing his address to strengthen the "public convictions" against the South, and against his own previous utterances,[1] he saw that the thirteen ratifications were the only means of communicating the power of the people to the federal compact; that each of these ratifications was passed by the highest legislative body known — the one usually employed by the people in such sovereign action; and that the acts of such bodies were generally considered to be of the character of ordinances or enactments. He saw that, for his argument, "ordinance" was a bad name, for the reason that the power of enactment and that of repeal are commensurate; and hence in order to refute the secessionists, he conceived the idea of substituting "deed" for "ordinance," and thereby getting a more favorable definition, to assist in producing the desired "public convictions."

So, in his address of the 4th of July, 1861, we find him speaking of South Carolina's ordinance of secession as follows: "It was intended, by calling the act of ratification an ordinance, to infer a right of repealing it, by another ordinance. It is important, therefore, to observe that the act of ratification is not, and was not, at the time, called an ordinance, and contains nothing which by possibility can be repealed." [I. Reb. Rec. 8.]

But, as if lacking confidence in this link of his feeble chain, he wrote to "the learned and accurate historian of the constitution," Mr. George Ticknor Curtis, who strengthened it as follows: "I have

[1] In 1826, Mr. Everett was in Congress, and a warm defender of the states. He then agreed, with Mr. Jefferson, that "the constitution of the united states is a compact of independent nations." [VII. Jefferson's Works.] On May 29, 1860, he wrote to Washington Hunt against coercion, and said our "union of co-equal sovereign states requires, as its basis, the harmony of its members, and their voluntary co-operation in its organic functions." On February 22, 1861, he wrote: "To expect to hold fifteen states in the union by force, is preposterous. . . . If our sister states must leave us, in the name of Heaven, let them depart in peace."

looked carefully at the ratification," and found it to be "much more in the nature of a deed, or grant, than an ordinance. An ordinance would seem to be an instrument, adopted by a public body, for the regulation of a subject, which, in its nature, remains under the regulation of that body; — to operate till otherwise provided for;" while "a deed, or grant, operates to pass something; and, unless there be a reservation of some control over the subject-matter by the grantor, his cession is necessarily irrevocable. . . . These distinctions are applicable to the cession of political powers by a people. . . . The question submitted to the people of South Carolina by the congress, was, whether they would cede the powers of government, embraced in an instrument sent to them. . . . In other words, they were asked to make a grant of those powers. When, therefore, *the duly authorized delegates of the people of South Carolina, executed an instrument under seal, declaring that they, 'in the name and behalf' of that people, 'assent to and ratify the said constitution,'* I can perceive no propriety in calling this deed an ordinance."

At the very outset, Mr. C. unwittingly shows the impropriety of calling the "ordinance" a "deed." The act he treats of, *was* "an instrument adopted by a public body, for the regulation of a subject, which, in its nature, remains under the regulation of that body." What that "public body" was, Mr. C. well knew, for the following words, which he did not quote, were at the head of the very "ordinance" which he pretends is a "deed." "*In convention of the people of the state* of South Carolina." That "body" was a republic, and the subject of the action was self-government, which was never intended to be alienated, but was to remain forever and ever "under the regulation of that body." So much for his artifice of exchanging words to get an advantage in definition. He succeeded in showing the absolute propriety of calling the "deed" an "ordinance."

And it is untrue that Congress "submitted" any question to the people, or the convention of South Carolina, at least in any such sense as Mr. Curtis implies; and even the "convention of states" did not do so; but South Carolina submitted a question to herself — her legislature speaking her voice in the submission. The following is an extract from the very ratification Mr. C. "looked carefully" at: "The convention having maturely considered the constitution or form of government, reported to Congress by the convention, . . . and *submitted to them by a resolution of the legislature of this state,*" etc.

Again, Mr. Curtis incorrectly represents the matter of ratifying. The convention of South Carolina sat and deliberated for her alone, acting exclusively with her power. The very beginning of the act is as follows: "*In convention of the people of the state* of South Carolina,

by their representatives, held in the city of Charleston," etc. After full discussion of the federal plan, South Carolina, in convention, by a vote of 149 to 73, passed, enacted, or ordained, the following: "The convention . . . do, *in the name and behalf of the people of this state*, hereby assent to, and ratify the said constitution. Done in convention, 23d day of May, A. D. 1788."

In the following particulars also, Mr. Curtis' statement is "conspicuously inexact." 1. He implies that "the duly authorized delegates" represent "the people of South Carolina," as a mass of individuals, a mere fraction of the nation, doing its part in the establishment of the constitution; and not as a political body. He seems to forget that said delegates could only act as a body, and for a body. 2. To help out the "deed" idea, he calls it an instrument under seal, though it has none of the peculiarities of one. The authority executing the instrument probably affixed no seal, the president and secretary using theirs merely for authentication. The convention could hardly have had a seal, and that of the state, most likely, could only have been used by the governor or secretary of state, who had no official connection with the act. 3. He ignores the "*convention of the people of the state* of South Carolina" altogether. 4. He even garbles, to avoid quoting the word "state," as it would bring to view the political body acting. 5. He leaves out the vote, which shows beyond question that assenting to, and ratifying, was done by a body-politic. As he does all these things, and more, in the thirty-five words I have underscored above, he must rank as the leading expounder of the present day.

But let us quote more of this astounding letter. Mr. C. continues that "there are those who pretend that the most absolute and unrestricted terms of cession, which would carry any other subject entirely out of the grantor, do not so operate, when the subject of the grant is political sovereignty; but a political school which maintains that a deed is to be construed in one way, when it purports to convey one description of right, such as political sovereignty, and in another, when it purports to convey a right of another kind, such as property, would hold a very weak brief in any tribunal of jurisprudence, if the question could be brought to that arbitrament. The American people have been much accustomed to treat political grants, made by the sovereign power without reservation, as irrevocable conveyances, and executed contracts; and, although they hold to the right of revolution, they have not yet found out how a deed, absolute on its face, is to be treated in point of law as a repealable instrument, because it deals with political rights and duties."

If these are the real views of Mr. Curtis, he has utterly failed to "rise to the height of the great argument" of a republic. The people,

whether states or a nation, were establishing institutions of self-government. To remain republican, *i. e.* to remain a self-governing people, it was *essential* that sovereignty should be forever in them. All the fathers considered — as Wilson, of Pennsylvania, expressed it — that "the supreme, absolute, and uncontrollable power is in the people before they make a constitution, and remains in them after it is made."

Now this is the absolutely essential idea of a republican polity. Hence, no such question was, or could have been, submitted to the people of South Carolina — or even thought of — as whether or not "the powers of government" or "political sovereignty" should be irrevocably alienated by them? Ceding, surrendering, relinquishing, or alienating "powers," by "irrevocable conveyances," never entered the public mind; but the question in each of the then existent communities of people virtually was: "Shall we, the state, *delegate* these powers [not to govern us, as a commonwealth, for *we govern*, but] to govern our subjects? Those who are to exercise these powers will be our citizens, elected by us. They will be our representatives, delegates, agents, trustees, and subjects, exercising for us the authority *we delegate* — no more!"

"Delegate," then, is the only Correct Word. — All the other words to be found in the common parlance, political essays, debates, state papers, etc., of that day, must, when they refer to the vesting of powers in a government, be limited in meaning to "*delegate*," because, 1st, in the nature of things, the people are the real government, the so-called government being only an agency, and possessing only delegated power; 2d, the constitution exhibits only a created government and derivative authority. Article I. says that "all legislative powers herein *granted* shall be *vested* in a congress," etc.; Article II. that "the executive power shall be *vested* in a president," etc.; Article III. that "the judicial power of the united states shall be *vested* in one supreme court," etc.; and Amendment X. that "the powers not *delegated* to the united states by this constitution, . . . are reserved," etc. All the powers of the constitution, then, are "*delegated*."

This word also refers back to, defines, and absolutely controls the meaning of "relinquished" and "vested," used in the ordinance of South Carolina, in the declaration that "the states" "retain every power not expressly relinquished by them, and vested in the general government."

This view is more evident, from the fact that all the other states that expressed themselves on the subject, used the precise word "*delegated*." [See the ratifications of Mass., N. H., N. Y., R. I.,

Va., and N. C., I. Ell. Deb. 322, 325, 327, 334; III. Ibid. 659; IV. Ibid. 244.]

The views of Messrs. Everett and Curtis, then, are untrue in fact, and unfounded in reason and political philosophy. There is no "deed absolute on its face," no "irrevocable conveyance" of "powers of government" or "political sovereignty;" but there is *an ordinance, by "a public body, for the regulation of a subject which, in its nature, remains under the regulation of that body, to operate till otherwise provided for."* And no such "deeds," "cessions," "conveyances," or "alienations," as they allege, can be found in American history; and it is the reverse of true that the American people have been accustomed to treat such "political grants" as "irrevocable conveyances." The very "political grants," which he describes as "powers of government," and misdescribes as "political sovereignty," are in all the state constitutions, and in the federal one, too, and are entirely subject to revocation and amendment, no matter whether it is provided for or not; and so in the case of all municipal corporations. The people, as organized, are supreme, and have unlimited power of amendment or repeal.

As these writers based their dogma of an "irrevocable cession" of "political sovereignty" on statements proved to be untrue, and arguments shown to be fallacious, we may consider their signal failure as a concession that the ordinances are repealable, and the powers revocable, as is undoubtedly the case.

There are several other ideas of this remarkable letter of Mr. Curtis, which would justify more than the mere mention I must content myself with.

1st. If he proves an "irrevocable conveyance" of "political sovereignty," he proves that the republican form of government here, is at an end, *i. e.* that the people have self-government no longer!

2d. He confounds powers of government with "political sovereignty," though the latter is the right to exercise or delegate the former. Any part or the whole of such "powers" may be delegated without diminishing sovereignty in the least.[1]

[1] It is almost universal to consider sovereignty as made up of, or as divisible into, the powers of government, and subject to delegation or reservation. Even while contending for the absolute sovereignty of the states, Mr. A. H. Stephens seems to argue that such *sovereignty* was impliedly reserved, in the original compact, among a "mass of residuary rights;" but that, to quiet apprehension, "this reservation was soon after put in the constitution, amongst other amendments, in plain and unequivocal language." The "reservation" he speaks of, is that of "*the powers* not delegated," — in the Tenth Amendment. [See I. War between the States, 489.] He seems to forget that it is sovereignty, which acts, in delegating and reserving powers, and that its own existence or transfer cannot be involved. The truth is, the constitution neither mentions nor even remotely alludes to sovereignty.

3d. He announces that "political sovereignty" is subject to alienation, like property. If so, why is it not subject to bargain and sale? Massachusetts, enriched by tariffs, bounties, etc., may buy out the stock at Washington, including what the people of South Carolina alienated, and Mr. Curtis may mount the viceregal throne of that province. Nothing at Washington is *extra commercium*. Or suppose, firstly, South Carolina becomes bankrupt; secondly, makes a *cessio bonorum;* thirdly, Massachusetts becomes the highest bidder; and, fourthly, Viceroy Curtis! These political teachers often advance startling ideas, — and work up to them!

4th. He leaves us to conjecture his grantee of the "irrevocable cession," by "absolute conveyance," of "political sovereignty." It cannot be the nation, for that is his grantor nor "the united states," for he denies that they are sovereigns. His grantee is "the government," to which he, like the Philadelphia platform, ascribes "absolute supremacy" and the allegiance of the states. But the government cannot be the grantee, because, 1st, the alleged grants are delegations, and the pretended grantee is a trustee and agent, using the powers for a principal or principals; 2d, the instrument containing the grants was "ordained" in 1788, while the government was not elected and organized till the spring of 1789. How could it be a grantee? 3d, the government could not be a party to the act creating it; 4th, it is not the government, but the independent branches thereof, that the grants or delegations are confided to; *e. g.* "All legislative powers herein granted shall be vested in a congress," etc. [See also the executive and judicial delegations.] It is, then, not the "government" [with a big G] that is "grantee." The said government, instead of being a unit, with oneness of mind and will, is three units, each distinct, coequal, and absolutely independent, and each with final and exclusive will, as to its own duty.

5th. All the officials are citizens and subjects of the several states, acting temporarily in a representative capacity. How could they, either as individuals or a corporation, have the technical capacity of grantee? Moreover, the grantee of "political sovereignty" must be sovereign; and yet Webster says "sovereignty in government" "is unknown in North America." So Mr. Curtis is contradicted by his hero!

6th. And, finally, Amendment X. affords absolute proof that the only possible grantee was "the united states." "The powers not *delegated to the united states* by the constitution . . . are reserved," etc. It is, then, *the association of states* that is the grantee, and the government, personally composed of subjects of states, is the association's agency. Nothing at all is alienated to the government.

We see, then, that "grantee" has no other sense than delegatee, trustee, and agent. No instrument has "operated to pass something." The states are associated as equals; they are not changed by their act of association, in name, people, geography, organism, or authority; they are "the united states," and are themselves the real government, the so-called governments being their created agencies, acting solely with their life and power. All American history supports this view.

The People never part with Self-rule. — I now gladly contrast with the foregoing errors, the wisdom of the "best minds" of the golden age of Massachusetts, as expressed by "the celebrated Chief Justice Parsons," in her ratifying convention, with the assent of Hancock, Adams, Bowdoin, Ames, King, Gore, and others. The new political system, said he, is "a government, to be administered for the common good, by the servants of the people, vested with delegated powers, by popular elections, at stated periods. The federal constitution establishes a government of this description, and in this case the people divest themselves of nothing. The government and powers which the congress can administer, are the mere result of a compact," etc.

While dealing with this most vital subject, it is perhaps best to group a few of the many high authorities at hand, to emphasize the assertion that *the people made no conveyance of power whatever*, except in the sense of trusts or delegations, to their own "agents," "servants," or "substitutes," as all the fathers and all the states considered (and actually called) these grantees.

"The people are the fountain of all power. They must, however, delegate it to agents." [Pendleton.] "The federal and state governments are, in fact but different agents and trustees of the people." [Madison.] "The people are the masters who gave it, and of whom the servants hold it." [Marshall.] "Those who are entrusted with the administration, are no more than the creatures of the people." [Washington.] "By their servants they govern. They do not renounce their power; they do not sacrifice their rights; they become the true sovereigns of the country, when they delegate that power, which they cannot use themselves, to their trustees." [Fisher Ames.] Hamilton, Livingston, Wilson, Iredell, Pinckney, and many other most eminent fathers could be quoted to the same effect, — all of them agreeing, that THE PEOPLE DIVEST THEMSELVES OF NOTHING, but do all such acts, as establishing governmental agencies and administering them, as societies, each a republic, with inherent, inalienable, and unlimited right of self-government. The federal convention unanimously declared, "The style of *this government* shall be *the united states*." This

has no other meaning than that *these societies of people "divested themselves of nothing,"* but intended, under the new system, to continue the *function* of governing themselves. Function, I say, for society naturally and functionally governs itself, — doing, under its Maker, what it was made for, just as man feels, thinks, acts, walks, talks, eats, digests, etc., in governing and preserving himself according to his being.

Yes, common sense shows that a republican people *must* "divest themselves of nothing," if they preserve liberty and self-government; and that the powers they, with other societies, put in government *must* be "the mere result of a compact;" and must be powers delegated or entrusted to an agency.

I can wind up this chapter with nothing more apposite, instructive, and conclusive, than an extract from his "Examination of the Leading Principles of the Federal Constitution," by Noah Webster, — an expounder whom the American people should better know. The italics are his: "The states, in their separate capacity, cannot provide for the *common* defence; nay, in case of a civil war, a state cannot secure its own existence. The only question, therefore, is whether it is necessary to unite, and provide for our common defence and general welfare." If yes, continues he, there is need of "constituting a power over the whole united states, adequate to these general purposes."

"The states, by granting such power, do not throw it out of their own hands, — they only throw each its proportion into a common stock, — they merely combine the powers of the several states into one point, where they *must* be collected, before they can be exerted. But the powers are still in their own hands, and cannot be alienated, till they create a body independent of themselves, with a force at its command, superior to the whole yeomanry of the country!" [See New Haven Gazette, Nov. 29, 1787.]

CHAPTER VII.

MISSTATING HISTORY AND RECORDS.

INTERPRETATION No. 11.—MISSTATING THE VIEWS AND ACTS OF THE CONVENTION.

JUST as they tear the "We-the-people" shred from the preamble, and show by it that the constitution is not a union of states, but is an association of the people thereof to form a nation, of which the states are mere provincial parts, these expounders pick out of the record of the convention of 1787, and of the speeches and writings of the fathers, little passages, which, torn from the contexts, support their theory. In this chapter I shall confine myself principally to exposing the misstatements or mistakes made in reference to the action and plan of the "convention of states" of 1787. I will begin by reiterating briefly—

The Reasons for making a New Federation. — The first "federal government of these states" consisted of a mere congress, vested with nearly the same legislative powers as the present one. But, as it had no coercive authority to enforce its enactments, compliance was virtually at the option of the states. Of course such a governmental contrivance was weak and inefficient; and, when peace supervened, and "union or subjugation" ceased to be the momentous alternative, each state began to exercise her free will as to commerce, currency, debt, contributions for defence, etc., and other matters of common interest. The tendency of things was towards disunion and weakness, if not civil or internecine strife. Hence, the wise and patriotic fathers counselled their states, and finally induced them to "form a *more perfect* union," and "a *more efficient federal* government," giving to this the legislative powers of the first, with a few additional ones, as well as commensurate executive and judicial authority,—thus making for federal matters the complete government that each state enjoyed, and giving to it the same authority and means of enforcing its powers on individual citizens that the state governments possessed; so that the said agencies, state and federal, became a great "political machine," owned and worked by the states, through their elected agents,—these

being their own citizens and subjects. [See Part II., Ch. I.] The said states were themselves to compose whatever nation there was to be, and it was they alone that authorized legal coercion of *their* citizens by *their* federal agency; but they most positively and carefully withheld jurisdiction and coercive power over themselves.

The history and records of the country contain no word of testimony against the above; but the perverters have, by industrious culling, gathered "line upon line, and precept upon precept, here a little and there a little," until they have produced a sort of "mosaic dispensation" of centralism, from which arises that monster, the corporate despot of Washington!

The Misstatement to be refuted. — Not long after the opening of the convention, to wit, on May 30, 1787, it was resolved that "*a national government ought to be established, consisting of a supreme legislative, executive, and judiciary.*" [I. Ell. Deb. 151.] Daniel Webster quotes this, and asserts that "it completely negatives all idea of league, compact, and confederation. Terms could not be chosen," continues he, "more fit to express an intention to establish a national government, and to banish forever all notion of a compact between sovereign states." [Speech of 1833.] And Judge Story comments in the same style. He quotes the above resolution, and says: "It plainly shows that it was a national government, and not a compact, which they were about to establish." He further remarks that "the inefficiency of the old confederation forced the states to surrender the league then existing, and to establish a national constitution." [I. Story, Com. 237.]

The two leading — if not the only — ideas Story and Webster aim at in this quotation are involved in "national" and "supreme." They use the above resolution to prove, 1st. That a consolidated *nation* was formed; 2d. That the government of it is a *sovereignty*. Taught by them, Lincoln said the states are mere counties, with no rights but those reserved to them by the nation in the constitution. The dogma of the "absolute supremacy" of "the government," and the allegiance of the states thereto, promulgated by the Philadelphia convention of 1866, sprung from the same source. All these heresies are comprehended in Webster's assertion that, so far as the constitution goes, "so far state sovereignty is effectually controlled."

Both of the above ideas of Story and Webster are utterly baseless; and the use of the said resolution to prove them is wrongful. The resolution was adopted without much notice, and with no debate, and was referred to the committee of the whole, with other propositions, as matters for future consideration, [V. Ell. Deb. 134,] and in the three and a half months of subsequent deliberation, the direct contrary of

what the perverters predicate of this resolution was contended for, and finally prevailed, as I will now proceed to show historically. [The reading of Appendix C, with this chapter, is important.]

Two or three plans for a federal constitution were before the committee of the whole convention. Edmund Randolph's plan opened as follows:

"1. Resolved, That the articles of confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution, namely: common defence, security of liberty, and general welfare." On May 30th, at the suggestion of G. Morris, Randolph moved the postponement of this, and the consideration of the three following: "1st. That a union of states, merely federal, will not accomplish the objects proposed. . . . 2d. That no treaty or treaties among the whole or part of the states, as individual sovereignties, would be sufficient. 3d. That a national government ought to be established, consisting of a supreme legislative, executive, and judiciary." Several members at once expressed the doubt "whether the act of Congress recommending the convention, or the commissions of the deputies to it, would authorize a discussion of a system founded on different principles from the federal constitution?" [V. Ell. Deb. 133.] Whereupon, *the first two of the above resolutions were dropped, and not heard of afterwards;* and the third became the first of nineteen resolutions, which the convention adopted for consideration [Ibid. 189], and in which the prospective constitution is repeatedly styled — the "articles of union." [Ibid. 190.]

How the States instructed their Deputies. — Before going further, it is well to note the instructions in the commissions of the deputies, and "the act of congress" referred to. Massachusetts, in commissioning hers, said, "the sole and express purpose" was to make such "alterations and provisions," as will "render the federal constitution adequate to the exigencies of government, and preservation of the union." [I. Ell. Deb. 126.] "To revise the federal constitution," was the phase of several; and "to render the constitution of the federal government adequate to the exigencies of the union," was the language of others. [See I. Ell. Deb. 126–139, for the language of all.] And the act of the congress of the states upon the subject, expresses the same idea, in nearly the same words. [Ibid. 119–20.] I will observe, *en passant*, that these extracts enable us to appreciate another of the errors that so abound in some of Mr. Webster's efforts, viz.: that the instrument of 1778 was called "articles of confederation," while the one of 1788 "called itself a constitution," *i. e.* "a government proper," and that therefore the two systems were essentially different. Without insisting that "there is nothing in a name,"

I merely state the fact, that both states and fathers habitually called each instrument "the federal constitution," and "the constitution of the federal government." In reference to the instructions, the presumption is, that the deputies obeyed them. We shall see that they did so. [See Appendix C, No. 1.]

It appears, then, that the states instructed their deputies to amend the confederation; that the convention tacitly conceded that "the commissions of the deputies," and "the act of congress," *only warranted the making of a federal system;* and that it formally declined to say that "a union of states merely federal" *made by a treaty among the states as sovereignties,* would not accomplish the object in view. And we shall see that, so far from attempting the *nationalization* of the states, the constant aim of the fathers was to induce them to *federalize* themselves, and *remain intact as sovereigns;* and that in the course of the deliberations, every "national" word and idea was gradually eliminated from the system. But before going further, it must be shown that Story and Webster gain their whole basis by misquotation!

The Expounders' Style of Quoting. — The very resolutions, the first of which they quote as the basis of their theory, prove the entire falsity of it. To show this, let us put the first, and the last two in juxtaposition, and refer to the others: "1. Resolved, that it is the opinion of this committee, that the national government ought to be established, consisting of a supreme legislative, executive, and judiciary. . . . 18. Resolved, that the legislative, executive, and judiciary powers, within the states, ought to be bound by oath to support the articles of union. 19. Resolved, that the amendments which shall be offered to the confederation, by the convention, ought, at a proper time or times, after the approbation of congress, to be submitted to an assembly or assemblies of representatives," etc. [I. Ell. Deb. 181–2 V. Ibid. 189–90.] Here we see that not only was the convention instructed, as heretofore shown, to amend the articles of confederation but that such "national government" as the convention aimed at was to be provided for, in "articles of union" of states; and that the DESIDERATUM WAS TO BE ATTAINED BY MAKING "AMENDMENTS" "TO THE CONFEDERATION."

Now these expounders, suppressing all the others, put the first resolution before the people, to make them believe that the convention "completely negatived all idea of . . . confederation." Is not this garbling the sacred records? In like spirit, they point to the Randolph, or Virginia plan, that these resolutions are a part of, as national and to the Patterson, or New Jersey plan, as federal, and represent that the former prevailed, when, in reality, a pure league, federation

or union of states, was formed. The two plans, as originally introduced, are in I. Elliott's Debates, pp. 143, 175. They bear but little resemblance to the plan finally adopted. Each of them contemplated for its basis the "all-power" of the states.

The "National" Idea repudiated. — And, consistently with the above, on the very first occasion of considering this matter, the following record was made: "Wednesday, June 20th — The first resolution of the report of the committee of the whole being before the house, Mr. Ellsworth, seconded by Mr. Gorham, moves to alter it so as to run — 'that the government of the united states ought to consist of a supreme legislative, executive, and judiciary.' This alteration, he said, would drop the word 'national,' and retain the proper title, 'the united states.' . . . He wished also the plan to go forth as an amendment of the articles of confederation. . . . The motion of Mr. Ellsworth was acquiesced in, *nem. con.* The second resolution — 'that the national legislature ought to consist of two branches,' being taken up — the word 'national' struck out, as of course." [V. Ell. Deb. 214.] Nay, more, while the word "national" was used twenty-six times in the aforesaid resolutions, it was, in obedience to the above-indicated will of the convention, invariably exchanged for "united states," and "union of states;" so that finally neither the word "national" nor the idea of it was left in the federal plan.

More Anti-National Facts. — The expunction of "national" is merely the first of a series of great facts, that decisively contradict and refute Story and Webster, as well as their feebler followers. The 2d is, that on the 18th of August, 1787, the nationalists proposed to invest the general government with powers, to grant charters of incorporation, to establish a university and seminaries, to promote literature, science, and arts, to encourage useful knowledge, and discoveries, by premiums, etc., to establish public institutions, rewards, and immunities, for the promotion of agriculture, commerce and manufactures, etc. These, and others proposed, were suited to a national or state legislature, but not a federal one; and the convention declined to recommend transferring them from the state governments, where they already were.[1] [V. Ell. Deb. 440, 445, 446.]

The 3d great anti-national fact is, that a power to revise or negative state laws was repeatedly proposed, and as often overwhelmingly defeated. [Ibid. 174, 180, 321–2, 468–9.] On the occasion of the last

[1] If all powers, except those expressly delegated, were reserved by the states, the power to create the United States Bank, or Jay Cooke's National Insurance Company, to say nothing of other corporations, must have been reserved by the states, for no such power is expressed in the constitution. And as this power was proposed, discussed, and actually excluded from the constitution, there can be no doubt of the above corporate bodies being the offspring of usurpation by men who had sworn to refrain from it!

proposal, John Rutledge indignantly exclaimed: "If nothing else, this alone would damn, and ought to damn, the constitution;" and the convention, by vote, refused even to let it go to a committee, and the proposition was withdrawn. [Ibid. 468–9. See also Appendix C, No. 3.]

The 4th great anti-national fact is the all-important one, that the convention absolutely declined to give the general government even the least coercive power over states, and all the fathers spurned the idea, both in the federal and state conventions, as inconsistent with the plan, and tantamount to giving the power to wage war against the states. Mr. Madison said the idea was "visionary and fallacious;" Mr. Hamilton that it was "the maddest project ever devised;" and Ellsworth, Randolph, and others, spoke of it as preposterous, in the nature of war, and out of the question. This subject will be dealt with hereafter. Now what sort of a national government is that, which has no coercive power over the constituents of the nation — no power to hold them together, and no power to negative, or even revise, state laws? How could Mr. Webster permit himself to say that the constitution "effectually controlled" "state sovereignty"? And we must note here, that the states made three amendments to forefend this very danger, — the ninth and tenth to prevent the implying of powers for state control, and the eleventh to guard against even judicial coercion of states.

The Real Preamble. — The 5th great anti-national fact is one that Dane, Story, Webster, and Curtis must have deemed too important for allusion to, let alone comment on; and well they might, for it crushes them, and their little imaginary foothold in the constitution. The preamble and first article, unanimously adopted by the convention, for the proposed compact, were as follows: "We, the people of the states of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following constitution for the government of ourselves and our posterity. [Article I.] The style of the government shall be 'the united states of America,'" etc. [V. Ell. Deb. 376, 382.]

But the whole instrument, after being agreed upon and adopted, article by article, was placed in the hands of a committee of revision, who reported it back considerably improved in mere form. As to the preamble, the generalization, "We, the people of the united states," was substituted, as equivalent to the specification of the states. This was proper, because the constitution was to take effect when ratified by nine states, and it might, if the states were named, result that some would be designated, though not in the union. It should

further be explained, that the phrase "We, the people" was used in this constitution, because the previous pact had been ratified, or acceded to, by the state governments — the mere creatures of the people; whereas, in this case, it was intended to connect the federal government with, and base it directly upon, the very source of power — the sovereignty itself; making thirteen sovereignties, as Madison and all the fathers understood, the constitutors of the new pact — the constituents or principals of the new agency. The people of the states, being obliged to act as organizations, and according to the law of their political nature, gave separate assents, and hence the new constitution was not less a compact than the old one, though the powers vested by it in the government created, were more extensive. And the convention accepted the revised constitution as their work, and never reconsidered their solemn and unanimous approval of the phrase — "We, the people of the states." Dane and Story should have known this, as well as the independent ratifications of the states, when the former penned, and the latter quoted approvingly, the following, in reference to the preamble: "They properly said, 'We, the people of the united states' do ordain and establish; and not 'We, the people of each state.'"

"*The style of the government shall be the united states of America.*" Here we see that the real government is the states themselves, the "general government" being "the government of [*i. e.* belonging to] the united states," and a mere agency. These states were republics, and they intended to keep, and not cede, political sovereignty. Their citizens only, and not themselves, were to be the subjects of governing power. This is what Madison meant, in the Virginia ratifying convention, by the phrase "*a government of a federal nature, consisting of many coequal sovereignties;*" and what Parsons meant, in the Massachusetts ratifying convention, by saying, "*the people divest themselves of nothing,*" when they delegate powers of government!

The 6th great anti-national fact is, that the entire convention thought they had formed a federal plan, because in their unanimous letter, reporting the constitution to congress, they spoke of it as "the federal government of these states;" and in the compact itself, they repeatedly wrote the phrase — "the united states," and "union of states." And it is a most potent fact, that Gouverneur Morris, one of the chief consolidationists, and the chairman of the committee on revision, whose pen made the change referred to above, declared, years afterwards, that "*the constitution is a compact between political societies, . . . each enjoying sovereign power.*" [III. Life of G. Morris, 193.]

Anti-national Contemporaneous Exposition. — But, perhaps, the most important fact in the history of this great subject, is the follow-

ing, that, after the work was finished, all the leading fathers, in the state conventions, through the press, and before the people, characterized the constitution as a *compact*, and the system as a *federation* of sovereign states, as is already shown in Part I., Chapter VII.

It is quite certain, then, that the original states, and the fathers, intended to avoid the very thing these expounders predicated of the constitution, viz. — *a consolidated nation*, or a sovereign national government; and to make the very thing these men deny, viz. — *a federal union of states.*

Hamilton, all of whose views and wishes were in favor of consolidation, was forced to admit that his plan and idea had been rejected [V. Ell. Deb. 556], and that the system was "A CONFEDERACY OF STATES." [II. Ell. Deb. 353.] He also said: "While the constitution continues to be read, and its principles known, the states must, by every rational man, be considered as *essential component parts* of the 'union.'" [Ibid. 304.]

CHAPTER VIII.

DANIEL WEBSTER'S MASTER-PIECE OF CRITICISM.

INTERPRETATION No. 12. — "CONSTITUTIONAL COMPACT."

IN 1833, John C. Calhoun submitted a series of resolutions to the United States Senate, the first of which declared, "that the people of the several states . . . are united as parties to a constitutional compact, to which the people of each state acceded as a separate sovereign community."

In his celebrated reply, Daniel Webster severely inveighed against Mr. C.'s use of the words "compact" and "accede," and charged him with "abandoning the use of constitutional language for a new vocabulary." "If," said Mr. W., "nothing was done but acceding to a compact, nothing would seem necessary, in order to break it up, but to secede from the same compact. . . . This is the reason why it is necessary to give new names to things; to speak of the constitution, not as a constitution, but as a compact; and of the ratifications by the people, not as ratifications, but as acts of accession." And he repeatedly made the assertion that "there is no language in the whole constitution, applicable to a confederation of states."

These utterances involve the absurd assumption that all language used, in devising, discussing, and establishing the constitution, by the fathers and the states, which they did not also use in the instrument, is unconstitutional, as well as improper for resolutions and arguments concerning it.

"Compact" and "accede" are correct. — I shall now proceed to show that Mr. C's language was precisely that which the fathers and the states habitually used, throughout the great series of discussions and acts attending the establishment of the federal system. Nay, more, I shall show before concluding, that *Mr. Calhoun's resolution expressed the most studied and elaborate views of Mr. Webster himself!*

In the establishment of the constitution, the acts by which the conventions expressed the wills of their respective states were described by a variety of words and phrases, all of which embodied the idea of a ratification of the instrument by political bodies. Little Delaware, in

her ordinance, hitched to "the constitution," a tandem of four, as follows: "approve of, assent to, ratify, and confirm the said constitution." Besides these, the states and the fathers used, for the purpose of expressing the same act, "join," "unite," "accept," "accede to," "affirm," "sanction," "agree to," "adopt," etc. Of these, the word "ratify" was used in all the ordinances, probably because it was the technical word usually employed by sovereigns to express their sanction of treaties, alliances, leagues, federations, and other compacts. And it seems to be the word best fitted to signify a commonwealth's adoption of a federal pact, while it does not even hint at the assent or approval of mere voting persons. The theory of the expounders really is, that our people, in provinces, counties, or departments, adopted the "national constitution," just as the French elected the President for life, the Emperor, and, more recently, the *plebiscite* concerning a responsible ministry. They seem, however, to perceive but dimly that their theory implies a like despotic authority here, which *permits* the expression, and provides for the ascertainment of the popular will — or rather wish.

Any fair arguer would have known that all the above expressions conveyed the same idea, so far as they referred to the giving of existence and authority to the new system. It was plainly impossible for one who knew the facts, not to see that the states, in convention, made a proposal to each state; each assented to and ratified it; thereby it became the "federal constitution," and they became "the united states."

But Mr. Webster was only able to attack the aforesaid resolution by sophistry; so he "criticised" the above words, seeming not to know that by "accede" Mr. Calhoun precisely meant *ratify*, while by "compact" he precisely meant *constitution;* and that the character and legal effect of the instrument depended, not upon what Mr. Calhoun or anybody else called it, or, indeed, what it called itself, but upon what it actually was.

He ignored Constitutional History, or he would not have characterized the above words as "unconstitutional language," for the fathers and the states habitually used compact as meaning constitution, and accede as ratify, as will now be shown. [Italics mine.]

HAMILTON wrote to Madison, June 8, 1788: "God grant that Virginia may *accede*." He wrote to Chipman, of Vermont, July 22, 1788: "The *accession* of Vermont to the *confederacy* is of great importance." And in a subsequent letter he speaks of Vermont's "*accession* to the union," and her becoming a *member* of the *confederacy*. In Article 85 of the Federalist, he characterizes the association of states as a *confederacy;* calls the constitution a *compact;* and says that "thirteen

independent states" are "*the parties to the compact.*" In the ratifying convention of New York, he says the new system is "a *confederacy* of states!" [II. Ell. Deb. 353.]

MADISON, in the Virginia ratifying convention, characterized the new plan as "a government of *a federal nature*, consisting of *many co-equal sovereignties.*" This is his key-note, and many passages containing the words "compact" and "accession" could be produced. One will suffice: "Suppose," said he, "eight states should ratify, and Virginia should propose certain alterations as the previous condition of her *accession.*" [III. Ell. Deb. 618.]

JOHN JAY wrote to Washington in June, 1788: "The *accession* of New Hampshire does good, and that of Virginia would do more." So we see that all "the writers of the Federalist," not only recognized the states, instead of the nation, as the actors in establishing the constitution, but they, like Calhoun, "abandoned the use of constitutional language for a new vocabulary."

WASHINGTON, in a letter to David Stuart, of Oct. 17, 1787, spoke of the new constitution as a "*compact or treaty,*" and said that among the states, "there must be reciprocity or no union."

To Bushrod Washington, he writes, Nov. 10, 1787: "Is it best for *the states to unite?* . . . If the union of the whole is a desirable object, the *component parts* must yield a little, in order to accomplish it." He then asks what the opponents in Virginia would do, "if nine other *states* should *accede* to the constitution."

Writing to Madison, Dec. 7, 1787, he speaks of "the *states acceding* to the federal government," etc. To the same, January 10, 1788, he says: "Nine states will have *acceded* to it."

To Gen. Knox, June 17, 1788, he speaks of "the *accession* of South Carolina," and hopes "that the states which may be disposed to make a *secession*, will think often and seriously on the consequences."

To Marquis de Lafayette, June 17, 1788, he speaks of "the *accession* of Maryland to the proposed government," and says, "the *accession* of one state more, will complete *the number needed to establish it.*"

To Gen. Pinckney he wrote on June 28, 1788, that "*New Hampshire* had, on the 21st instant, *acceded to the new confederacy*, by a majority [in her convention] of eleven voices." To John Jay, July 18, 1788, he speaks of "the *accession of ten states;*" and July 20, 1788, to Sir Edward Newenham, of the states "having formed a *confederated* government."

Writing to Gouverneur Morris, in 1789, he hopes "the *non-acceding* states will very soon become *members of the union.*"

And on July 1, 1790, he writes to Count de Segur: "*The union of*

states is now complete under the new government, by the late *accession* of Rhode Island to the constitution." [All these extracts are to be found in Vol. IX., Writings of Washington.]

The following extract from a letter from Washington to the Earl of Buchan, dated April 22, 1793, — first published in the London Autographic Mirror, in 1865, — shows his federal idea or conception at that date to be unchanged: "I send you the plan of a new city about the centre of *the union of these states.*"

FRANKLIN could be quoted extensively to the same effect. A single quotation will suffice. He wrote on Nov. 5, 1789: "Our new constitution is now established with *eleven states*, and the *accession* of a twelfth is soon expected."

Governor Randolph, Judge Parsons, Chancellor Livingston, Samuel Adams, James Wilson, and many others, could be quoted to the same effect. A single expression of the first named, in the Virginia convention, will suffice: "Were I convinced that the *accession* of eight *states* did not render our *accession* also necessary to preserve the union, I would not *accede* to it, till it should be previously amended." [III. Ell. Deb. 67.]

Neither Disputant knew the Facts of the Case. — Mr. Webster and Mr. Calhoun seem to have been about equally well-informed in constitutional history. In the rejoinder of the former to the latter, in 1833, he said: "The gentleman also attempts to find an authority for his use of the word 'accede.'" He then went on to admit that Gen. Washington used it, as did his biographer. But, said he, it was in regard to North Carolina's ratification; as the old union was broken up, and the new one already formed, "there was propriety, perhaps, in calling her adoption an accession."

The above extracts indicate the effective reply Mr. C. could have made. Besides beating his Titanic adversary in argument, and convincing the learned, he might have crushed him with mountains, and convinced the world! Mr. Webster's arguments were made mainly of assertions of fact, all of which could, then and there, have been proved to be unfounded!

In fine, all the fathers preferred the "new vocabulary," and were quite ignorant of the alleged fact, that there was "no language in the whole constitution applicable to a confederation of states."

Mr. Webster's Views late in Life. — As Mr. Webster was an American politician, like most of the class, he could act the pendulum. Having done ample justice to his consolidation swing, I will show his federal oscillations. [The italics are my own.]

He wrote to Col. William Hickey, Dec. 11, 1850, that "the constitution is the bond, and the only bond of *the union of these states.* It

is all that gives us a national character." ["The Constitution," p. xxii.] This expresses precisely the idea of Calhoun, and is the exact opposite of Mr. Webster's assertion in 1833, that the constitution is the union of the people, and not a union of states!

He wrote to Mark Cooper, of Georgia, in 1851: "The states are united, *confederated*, not 'chaos-like, together crushed and bruised.'"

"The states are united, confederated." All the fathers, and the constitution, speak of "the union of states" — "the united states." These expressions, with their habitual use of federal (and its cognates from the same root, *fœdus*) make it impossible that they should have intended anything else by the constitution, than a league "between the states ratifying the same." This was unquestionably Webster's meaning. "The states are united, CONFEDERATED."

In 1851, to the young men of Albany, he said: " . . . here is the *constitutional compact* nevertheless still binding; . . . when called upon to fulfil a *compact*, the question is, will you fulfil it? I, for one am ready." Again he speaks of "the *compact* of the constitution," being a "fair" one.

At Capon Springs, Va., in June, 1851, he said the following: "How absurd it is to suppose that when different parties enter in a compact for certain purposes, either can disregard any one provision, and expect, nevertheless, the other to observe the rest. . . . If the Northern *states* refuse wilfully and deliberately to carry into effect" one "part of the constitution, . . . and congress provides no remedy, the South would be no longer bound to observe the *compact*. A bargain cannot be broken on one side, and still bind the other side."

So we see that Mr. Webster himself put the "new vocabulary" in requisition, even using the phrase "constitutional compact," which he so chided Mr. Calhoun about.

Attempts to explain. — In the above extract from his speech at Capon Springs, by the phrase "different parties," Mr. Webster must have meant "states," and by "certain purposes," he could but mean the reasons for which they federated, the "parties" and "purposes" which the constitution in fact exhibits. It is quite presumable, too, that when he used "compact," he meant one of "the compacts which," Hamilton said [in Fed. 85], were "to embrace thirteen distinct states in a common bond of amity and union." Nay, more, the presumption from this very extract is, that he agreed with Hamilton's assertion in the same article that "thirteen independent states are . . . the parties to the compact."

Mr. Curtis, like Mr. Webster, has attempted to explain the phrase "constitutional compact" consistently with the theory of 1830–3. He was, said Mr. Curtis, "speaking of a particular clause in the con-

stitution . . . as founded in a compact between different classes of the states," etc. The fallacy of this hardly needs exposure. 1st, the "parties" of the constitution are "states," and not "classes of states," or "sections," or "the North and South." 2d, there is no history of such "parties" as the latter having existed, negotiated, deliberated upon, much less established, "compacts." 3d, it is descending to the ridiculous to suppose that such "parties" agreed upon representation, taxes, coinage, regulating commerce, etc., and that the nation then proceeded to make an imperial or "supreme law," embodying such agreements, and binding such "classes of states" and "sections" indissolubly to observe them. 4th, the phrase, "the Northern States," in the above extract, destroys Mr. C.'s assumption. 5th, it is a mere solecism to say the constitution is founded in compact, while it is not itself a compact. It is both a compact and a constitution of federal government.

Mr. Webster's Real Views. — These are most likely to be found, not in editions of his works, or in biographies prepared by interested persons, but in the studied and elaborate memorial to congress on the Missouri question, which he and others were elected by the inhabitants of Boston to prepare, and which they reported on Dec. 15, 1819. [See Appendix F.] Mr. Webster was then in his prime. He had been elected to congress from New Hampshire six years before, had distinguished himself, had doubtless thoroughly studied our polity and its history; and he seems to have been the chairman of the committee.

They present the memorial in the following manner: —

"The committee appointed by a vote of the meeting, . . . submit the following: —

DANIEL WEBSTER,
GEORGE BLAKE,
JOSIAH QUINCY,
JAMES T. AUSTIN,
JOHN GALLISON.

"BOSTON, Dec. 15, 1819."

In this memorial, Mr. Webster calls the united states "the American confederacy!" and the following are some of the most remarkable passages. The constitution provides that "'new states may be admitted into the union.' The *only parties* to the constitution, *contemplated* by it originally, were *the thirteen confederated states.*"

Objecting to an extension of "inequality of representation, which already exists in regard to the original states," he proceeds to say: "As between the original states, the representation rests on *compact and plighted faith*, and your memorialists have no wish that that

compact should be disturbed, or that *plighted faith* in the slightest degree violated. But the subject assumes an entirely different character when a new state proposes to be admitted. With her there is no *compact* and no *faith plighted.*" [The italics are mine.]

And he argues throughout on the assumption that a new state comes into the union by compact with the states already associated — these being represented by their congress. Nay, more, he declares that the states in the union have, individually, "the exclusive possession of sovereignty." In reference to the formation of Kentucky and Maine, from the territories respectively of Virginia and Massachusetts, he says: "No person has ever doubted that any state, in acceding to a division of its territory, and the formation of a new state, has always possessed the right to impose its own terms and conditions, as a part of the grant. The ground of this right is the exclusive possession of sovereignty," etc.

I will close the evidence of Mr. Webster's real views with three remarkable extracts, which need no comment, and are absolutely inconsistent with any subordination of the commonwealths or republics of America, to their agencies of government, or to that formless myth called the nation.

"No such thing is known in North America" as "the sovereignty of government." [Speech of 1833.]

"Until the constitution was ratified by nine states, it was but a proposal, the mere draft of an instrument. It was like a deed drawn, but not executed; . . . it was inoperative paper; . . . it had no authority; it spoke no language." [Ibid.]

"It never entered into their conceptions that they were to consolidate themselves into one government, that they were to cease to be Maryland and Virginia, Massachusetts and Carolina. . . . The objects of the common defence and the general welfare, and afterwards the objects connected with commerce and revenue, . . . were all they adopted as principles and objects of union and association, nothing beyond that. . . . Gentlemen, I hope for one never to see the original idea departed from." [Speech at Annapolis, 1852.]

There can be no doubt that these were and remained Mr. Webster's real ideas; for Massachusetts had prohibited him, and all her officers and citizens forever, from having any opinion on the subject. She then declared in her constitution (as she does now) that "the people of this commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state, and do and forever hereafter shall, exercise and enjoy every power, etc., which is not . . . by them expressly delegated to the united states."

"By them delegated!" Why, here is absolute proof that Massa-

chusetts is sovereign over the federal government! Mr. Webster's "opinion about the sovereignty of a state," indeed! Why, he could not have been her servant, if he had dared to opine on a question his sovereign had settled. "The Old Bay State" was ever the stickler, *par excellence*, for absolute sovereignty of a state, and she was right. [See also constitutions of N. H., N. Y., and others.]

Now, in view of Mr. Webster's early and elaborate statements, and the consistent ones just quoted, made near the close of his life, and especially the Albany, Capon Springs, and Annapolis speeches, and the Cooper and Hickey letters, have I not shown, as I undertook to do, that Mr. Calhoun's resolution expressed the most studied and elaborate views of Mr. Webster himself? Might not the latter, consistently, truthfully, and properly, have submitted the said resolution to the United States Senate? Here it is:—

"Resolved, that the people of the several states, composing these United States, are united as parties to a constitutional compact, to which the people of each state acceded as a separate sovereign community, each binding itself by its own particular ratification; and that the union, of which the said compact is a bond, is a union between the states ratifying the same."

Mr. Webster, in his speech of 1833, said: "Where sovereign communities are parties, there is no essential difference between a compact, a confederation, and a league. They all equally rest on the plighted faith of the sovereign party. A league or confederacy is but a subsisting or continuing treaty."

In giving this, and many other definitions as a publicist, statesman, or lawyer, Mr. Webster seems to forget that to sustain our position, we simply fill up his definitions with facts, just as lawyers prove the ingredients of murder, larceny, or other crime. In this instance, all the facts of history, as well as his own admissions, decisively prove the "league or confederacy."

Why was He on both Sides? — Webster's views last exhibited, were popular in Massachusetts previous to 1830. They suited her interests. Indeed, during the era of good feeling, viz., in 1825, Mr. Jefferson and Mr. Everett agreed that "the constitution of the united states was a compact between independent nations;" and, as we have seen, Mr. Webster and Mr. Calhoun were in "sweet communion joined." But in 1830–33 Massachusetts had vast interests staked in tariffs, navigation laws, fishing bounties, etc., which could be promoted by judicial opinions, commentaries and expoundings in favor of a nation. Naturally she then desired an advocate to controvert the following of Mr. Webster's own propositions, viz., that "the only parties to the constitution contemplated by it originally, were the

thirteen confederated states;" that the provisions of the said constitution "rest on compact and plighted faith;" and that the state in the union has "the exclusive possession of sovereignty." Did not Webster accept employment, and act as an advocate?

It almost seems as if there were in American history two Daniel Websters — one a statesman and jurisconsult, and the other a politician and advocate. One seems genuine, and the other counterfeit. The former, only, dwelt in, and breathed the pure atmosphere of truth. Perhaps it were better to say that the early stream of this great life descended, and, like an underground river, ran for years beneath the material interests and selfishness of his commonwealth, but finally flashed out and sparkled on to the ocean, reflecting the truth-beams of Heaven!

CHAPTER XII.

THE TRUE CHARACTER OF THE GOVERNMENT.

BY the action of their wills, the states give existence, life, and power to the visible government, and at the same time, and in the same act, they federalize themselves. No possible political will could delegate or grant, but that of the state, while the only possible grantee is the federation of states. "The government" — so called — cannot have any capacity to be a grantee, for decisive reasons which will now be presented.

"The government of the united states," like that of any state, is tripartite, *i. e.* three institutions, co-existing, but independently acting. It was not constituted a unit, so as to be a moral person, with a mind and a will. The "unity of government" which Washington spoke of, simply meant one system for all the states — without reference to its character — which should effectually provide for the "common defence" and "general welfare" of "the people" as organized.

To get a definite conception of the system, let us see how distinct and exclusive these institutions appear in the federal pact. Article I. declares that "all legislative powers herein granted shall be vested in a congress of the united states;" Article II. declares that "the executive power shall be vested in a president of the united states;" and Article III. declares "the judicial power of the united states shall be vested in one supreme court" and subordinate courts.

Keeping these articles under view, the following diagram enables the mind to see the individuality of these created entities to be as distinct, and their action as independent, as if they were separated by adamantine walls, and each harnessed in steel.

The truth is, the change in the government, from agency to sovereignty, is come, and is now hardening down upon us, which, as Burke says, has heretofore "*perverted from their purposes*" "all the free magistracies of the world."

Let us now cursorily review the new doctrine, and see how it appears dressed up in

President Lincoln's Plain English. — It is much to be regretted that the expounders did not, in the great era of perversion — 1830–33 — link on to their logical chain those candid and startling, but legitimate conclusions, afterwards stated with pen and sword by the late Abraham Lincoln as President; for such unfounded notions would then have been derided, and the utterers steadily prevented from exercising public functions.

We are sometimes startled, as well as amused, to see how poetry and oratory become nonsense and absurdity upon being put in plain English. Many a Lincoln has proved his own honesty and simplicity, while exhibiting his teacher as a mere sophist, or falsifier.

In 1861, after being elected to the presidency, Mr. Lincoln in a speech in Indiana, and in his inaugural address, said and assumed that *the states are but counties*, without sovereignty, and that the government is sovereign, and can rightfully coerce the states to obey it. In his extra-session message of the same year, he said: "The states have their *status* in the union, and they have no other legal *status*. . . . The union is older than any of the states, and, in fact, it created them as states. Originally, some dependent colonies made the union, and, in turn, the union threw off their old dependence for them, and made them states such as they are." "Our states have neither more nor less power than that reserved to them in the union, by the constitution, no one of them ever having been a state out of the union."

The deluded man had read Mansfield's Political Grammar, Webster's two great speeches, Jackson's Proclamation, and — to graduate on — Story's Commentaries, taking it for granted that these authors were correct; and not knowing that their peculiar expositions were fallacious, and were, moreover, identical with the charges originally made against the constitution, by its foes; and that it was only because the said charges were most signally refuted by the advocates of the constitution, that the American commonwealths adopted it.

Justice to Mr. Lincoln. — It seems proper to say that after his nomination, he had no time — even if he had been competent — to investigate for himself, and deduce correct conclusions. Moreover, the dogmas and arguments of Dane, Story, Webster, and Jackson were the platform, nay, the very soul, of his party. Confiding in the honor

of these expounders, he unqualifiedly accepted their treasonable perversions, and they, more than he, are responsible for the bloody consequences. From their premises and arguments, he concluded that coercion of states was constitutional and proper.

It is evident that he was "more sinned against than sinning." He was a person of fair intellect, slight education, limited knowledge, no research, kind heart, jocular disposition, a man, in short, of excellent nature — a strange mixture of simplicity and shrewdness — just the man with his inexperience in statesmanship, and his vague and hazy notions of political ethics and constitutional history and law, to be misled by the sophists of his party, and to be the instrument of crafty and unscrupulous politicians. He was not a man to contrive wickedness — to wilfully subvert the constitution, and to build his greatness on his country's ruin, but he could be moved, by various plausible and delusive pleas and pretexts, to do what he would have shrunk from with horror, had he understood the designs, or seen the hearts of the movers.

At all events, upon the ground indicated by the above extracts, the Southern states were coerced, *vi et armis*, for four years; and, at last, brought to writhe under the heel of federal military power!

At first, Lincoln's above-quoted *dicta* sounded like a huge joke; which was laughed at, till army after army from the "Northern hive" marched down to perpetrate it upon the South; whereat the laugh changed, for the joke was the fiat of an irresistible mob, that had become a great party, and for many years had fanatically surged like the many-voiced sea against the barriers of the constitution.

In glancing at some of this unfortunate man's conclusions from the assertions and arguments of his aforesaid teachers, we shall see that derision would be the fittest notice, but for the abhorrent consequences. Acting upon their doctrines, he made the land dark with death and mourning. But his guilt, to that of his teachers, morally, is as much less, as homicide by misadventure is less than that with malice prepense.

States and Counties politically equal! — "*Suppose*," *said he*, "*a state*" *and* "*a county*," *are* "*equal in territory and inhabitants, in what on principle is a state better than a county? Would an exchange of names be an exchange of rights?*"

Common sense, if present, would have answered: All the original states declared themselves to be separately "sovereign, free, and independent," at the moment of making, and up to the finishing of, the federal constitution; and it was in this character that they made and finished it. No county ever had such a character. Again, the states were named in the constitution, as the parties and actors of the

system. The counties were not mentioned. Again, each and every state, old and new, has now, as part of her constitution, or rather her declaration of rights, that "all political power is inherent" in her people, or equivalent words, while a county is a mere subdivision of such state, incorporated by her, with mere municipal powers, and repealable at will. The former is the creator, and the latter her creation. And finally, the states ratified and ordained the federal constitution of government. No county ever acted in the premises, or could do so!

A state and a county equal, indeed!

No doubt he honestly thought his teachers said so.

Sovereignty, if not asserted, is lost. — "*Much is said about the 'sovereignty' of the states, but the word even, is not in the national constitution; nor, as is believed, in any of the state constitutions. . . . No one of our states, except Texas, ever was a sovereignty.*"

This extract amounts to a mere guess, and is untrue and absurd, except as to the trivial fact that the word "sovereignty" is not in the federal instrument.

A little reflection would have shown Mr. Lincoln that the *word* need not be used, if the *thing* is in the states; and that this question is one of fact, which was settled by the solemn declaration of all, that "*each state retains her sovereignty.*" This declaration proves that the fact existed.

This sovereign will of each state — thus declared by all — existed and acted, until the "federating anew" was done; that is to say, until "a *more perfect union*" of the states, *than the previous one*, was formed; until the functionaries of the new government were elected; until they organized and went to work; and until the people, as persons, yielded consent and habitual obedience to the new system.

That the people, as sovereign commonwealths, *began* to make and impose upon the people, as persons, a government, no one will deny. How absurd it was to do so, if they had no right to go through, and coerce obedience. It is beyond question that they acted with sovereign will, and "ordained and established;" and we look in vain along the course of time and history, for any change in that sovereign will, and for involuntariness of union; until we come sadly to contemplate Lincoln and war!

Many thoughtless people think that the "powers" of declaring war, making treaties, coining money, levying taxes, etc., are sovereignty; but these are simply "powers" or authorities, delegated by each state, by virtue of its sovereignty, to the united states, and are in no sense sovereignty, this being, as Daniel Webster said, never in the government, but always in the people — these as commonwealths, and without any change whatever, being THE SELF-UNITED STATES.

As I have heretofore shown, New York, Massachusetts and New Hampshire, *in their constitutions*, declare their *sovereignty, eo nomine;* and equivalent declarations are made by all the states, including Mr. Lincoln's own state of Illinois, which, with all the other Northwestern ones, were, according to the express stipulation of the treaty of cession by Virginia to the united states, to be admitted into the union, with "the same rights of *sovereignty*, freedom and independence with the other states;" and Illinois has ever since been — though Mr. Lincoln was probably not aware of it — "a *sovereign*, free, and independent state," with all political power and rights, not only in her absolute ownership, but — excepting such powers as she delegated to the united states — in her actual possession; and so she substantially declares in her constitution.

But Mr. Lincoln was excusable for attaching importance to the non-mention of sovereignty in the federal pact, for Mr. Webster (apparently believing that if a note, bond, or other instrument, did not call itself such, it might be something else) strenuously argued that the constitution was a constitution, because it called itself a constitution. This is another of those numerous subterfuges, or shams of argument, the "school" is remarkable for. Mr. Webster's sounding phrases on this subject, expressed nothing, for states could constitute a constitution of a government, and call it a constitution, just as easily and properly as the people of a state, or of the so-called nation, could.

"What is it?" instead of "What does it call itself?" is the proper question; and the conclusive answer is — "The constitution of [not the united people or nation, but] the united states.'

Mr. Lincoln seemed to think that nations or states must, somehow, lose their sovereignty by not mentioning it in their compacts. Possibly he asserted ownership in the powers of attorney he gave; or his *jus disponendi*, his sound mind, and the name of the document, in each of his grants or conveyances! A Southern supreme court of the same flock, considered defective a certain class of titles, which all courts had for generations recognized, because the subjects of such titles were not mentioned in the federal constitution!

The Union created the States! — "*The union is older than any of the states, and in fact it created them as states.*"

He probably guessed that this was what Story and Webster meant, and he was not far wrong, though they would have blushed to see their views thus paraphrased. "Union of states," and "united states," are both constitutional phrases; and he might as well have said "united is older than any of the states, and in fact it created them as states; being united colonies before they were united states, it follows that united made them states!"

Would even Mr. Lincoln (let alone Story and Webster) have paid the price of pearls for the string on which they were strung? And yet, in the phrase — "a string of pearls," "string" bears the same relation to "pearls," that "union" does to "states." The same remark applies to the phrases: "a set of diamonds," "a purse of guineas," "a guild of men," and a federation or union of republics. The first name in each sentence is merely a descriptive one, while the main significance is in the last. The truth is, the constant use of the word "union," in place of the constitutional phrase "the united states," and the various phrases expressing "union of states," is a mere subterfuge, for these phrases are fatal to the whole argument of the expounders. They show that all *original* authority must be in the *several states*, while all *delegated* authority must be in "the *united states*." *The states must have pre-existed to be associated, while the same states must continue to exist, to be the united states.*

The States became subject to their own Union! — Let us notice one more gem. *The states have "their status in the union, and they have no other legal status. . . . Our states have neither more nor less power than that reserved to them in the union by the constitution, no one of them ever having been a state out of the union.*"

Every word is fallacious and untrue, for the states were necessarily pre-existent to the union of them; their wills made the union; their instrument of compact throughout contemplates and treats them as the sole parties to, and actors in, the union; and finally, they call themselves therein a "union of states" and "united states" — using these very words. As individual states, they must have possessed all original authority, and, as an association, they could but hold delegated power.

But the climax of Lincoln's absurdity consists in his pointing to the tenth amendment, as the evidence of the states having no other powers than those "reserved to them in the union by the constitution," and thus showing that our foolish fathers left the states, under the original constitution, absolutely without powers; and had to amend, in order to give them a few!

Common sense would have taught Mr. Lincoln that the states of the association "delegated" and "vested" all the "powers" in the pact; and "retained" all rights and powers not delegated; *i. e.* kept them out of the pact, and in themselves; that the powers delegated must be still owned by them, and hence that the states have all powers, including those in "the constitution of [*i. e.* belonging to] the united states."

Everybody knows, from the case of Texas, North Carolina, and Rhode Island — to say nothing of others — that Mr. Lincoln's asser-

tion, that no state was ever such out of the union, is entirely unfounded! But if it were true, it would not affect the question of sovereignty, as this is only predicable of will, and as will only resides in the republics or organizations of self-ruling people.

Seeing Things upside down — Would to God these perversions and blunders had been as harmless as they are amusing! They are only equalled by those of the philosophers who contend that the sun diurnally circuits the earth; or that of the boozy wight, standing on the wrong side of the square, awaiting the arrival of his house, so that he can step in; or that of the Irishman digging away a bank "to let the dark out of his cellar!"

These are called "constitutional views!" If "views" at all, they are "views" *afar off* — through the moral *mirage* of platforms, partisan speeches, and sectional commentaries, which distort every thing, and turn it upside down. Why! if Hamilton, Jay, Washington, Hancock, Franklin, and all those fathers who were so fortunate as to die early, were to revisit their beloved America, such "views" would astonish them as much as it would to see people standing on their heads, houses inverted, ships "walking the waters," with masts for legs; trees rooted in the sky; rivers running to their sources; or babes giving birth to their parents.

They would find their voluntary union of states to have grown involuntary and indissoluble; states degraded to counties, and returned to a worse than British provincialism; and the *quondam* governmental agency transmuted to a new and monstrous entity — a soulless being, with "absolute supremacy," and swaying the sceptre of an empire!

The Worship of the Idol "Union." — In the very next paragraph to the one just reviewed, Mr. Lincoln uses the word "union," in the absurd sense I have indicated, seven times in nine lines. The priests of union-worship, wishing to avoid the ideas couched in the full phrase, "union of states," or "united states," use the word "union" without its proper adjuncts, and attribute to it corporate personality, and sovereign authority; besides falsely saying it is a union of people, and not a union of states. They cite as their sole proof, the insignificant tag called the preamble, which, though vastly important as a statement of motives, is really no more of the compact or law, than the tail, or the kink of it, is of the pig; and conclude the argument by the untruth, that the states ceded or surrendered (*i. e.* alienated) to the said "union," a paramount or supreme sovereignty over themselves. Not a line of the constitution or history, hints at any such transfer, while all evidences show that the separate states *delegated* (but did not *alienate*) powers to "the united states" (and not

to the "union,") these states thus governing themselves, as to their federal affairs, through their federal agency.

The sophistical and quibbling priests know that by using the constitutional phrases "united states" and "union of states," they would direct the thoughts, even of the simplest mind, to moral or political persons — commonwealths self-joined for self-government and self-preservation. They know that the said mind would look into the pact, and see "the states in this union" [Art. IV.] to be the parties, the delegators, the sovereigns; and the government to be the creation, and the agent of the said states. Aye, they know that men who have merely enough brains and education to read and count, may see, in the instrument, specified powers, *confided* to the said agent by the said sovereigns; can, on a tally-stick, notch the number of them; and must know that a president, whether named Buchanan, Lincoln, Johnson, Grant, or Hayes, becomes a perjured usurper and traitor, and deserves to be hung, the moment he goes beyond them.

These are the Reasons why, under pretence of interpretations, commentaries, judicial decisions, etc., the so-called expounders sophisticate, misrepresent, garble, and falsify the sacred records of the country; why they found a theory on the preamble that belies the compact; why Story adds an eighth article to the constitution [Story, Com. § 1856], and why the names of the signers, who simply planned, but did not ordain, the compact, are always published with the instrument, to make the impression that *they* ordained, while *the names and acts of the states, who did ordain and establish*, are always suppressed or ignored!

These are the reasons why our deluded people are induced to look up to flags, soaring eagles, and stars — not down to what these are symbols of; to search in "the milky baldric of the skies" for the constellation of the union, rather than grovel in — to understand — the actual system of associated states; and to keep their "eyes in fine frenzy rolling, from earth to heaven," instead of watching, with that "eternal vigilance which is the price of liberty," to see that the sacred constitution is preserved, and its duties done.

Just so the priests of idolatry divert attention from the statue of wood or stone; prohibit reasoning about it; and send the heated and fanatical imaginations of devotees, filled with fear and awe, in search of some invisible spirit, whose all-power can favor or harm them, according to their obedience and gifts to the priesthood!

Eternal Vigilance is the Price of Liberty! — The people of America must come down from stars, and eagles, and flags; and regard matters of political government as human and earthly affairs, to be arranged, in

a common-sense and judicious manner, for the benefit of all concerned. A voluntary union among neighboring states must be founded on amity and mutual interest; and these motives, as well as the voluntariness, must be preserved, or the association of states becomes an empire of provinces!

Fisher Ames likened the states to beautiful and useful structures, standing upon the naked beach, and the union to a dyke fencing out the flood; and said that without this, the next spring tide would sweep them to a common destruction. [II. Ell. Deb. 159.]

Americans must become practical — nay, vulgarly prudent, and even grovel in and among their defences, remembering that their institutional walls are to protect their precious blessings in their citadels of liberty, the commonwealths, not more from exterior force, than from their own rulers.

CHAPTER X.

WASHINGTON'S POLITICAL FAITH.

HAVING noticed the preposterous theory predicated of the constitution by Lincoln, I will show the directly opposite view taken of the same sacred words and figures by the great Washington.

I need not contrast the men, as it will be duly done by history. But their assertions and opinions should be compared. And to determine preponderance, perhaps we should contrast Lincoln's training and associates, and his sudden rise and growth from partisan and sectional antagonism, with Washington's gradual growth of intellectual stature, his exemption from sectional and partisan prejudice, and his being of that august band of patriots — *primus inter pares* — who made American federal liberty institutional. Nay, more, Washington's intercourse with the giants of those days, was fraternal and close through their generation; and he bore a leading part in all the discussions and ordainings which make up the recorded political history and philosophy of that sublime epoch.

It may be said, without fear of contradiction, that the statements of the fathers, contained in Part I., Chapter VII., of this work, are precisely the views of Washington. The following extracts show this beyond all doubt or cavil.

And if the American people be really possessed of the spirit of '76, they will henceforth follow the commentaries of the expounder, *par excellence*, George Washington! and thus preserve the commonwealths and their union!

Washington was as truly a state-rights, or rather state-sovereignty man, as Jefferson or Calhoun, and understood our institutions quite as well as they did. But he never thought of the miserable figments which Story, Webster, Lincoln, and the Philadelphia convention of 1866, foisted upon the constitution as expoundings of it; viz., that the making of the union consolidated the several commonwealths of America into one national unit; or, in other words, the people as a nation, in *their* national constitution, "distributed *their* powers be-

tween *their* general government and *their* several state governments;" and that so far as the constitution went, "so far state sovereignty was effectually controlled;" or, to sum up the matter in a sentence, that the states were reduced to mere fractions of the great unit, — *i. e.* to counties or provinces of a state.

The most of the extracts will be found in Sparks's "Writings of Washington." If they are elsewhere, proper citations will be given. The reader will please observe that this "great expounder" begins by mentioning that "the states [are] to appear in the convention;" that he speaks, all the way through, of the states adopting, ratifying, or acceding to the compact; that he calls the people "the people of these states," and the new system, "the federal government of these states" (and, by the way, this is the unanimous expression of the "convention of states" that he presided over); that he speaks of the constitution as providing for "the political relation which is to subsist" between "the states," and of "the measures, taken by the different states, for carrying the new government into execution;" and, finally, that he says it will be "an important epoch in the annals of this country," "when the states begin to act under the new form."

Washington to Madison, March 31, 1787: —

"I am glad to find that congress have recommended to the states to appear in the convention."

General Knox to Washington, March 19, 1787: —

"Your name has had great influence to induce the states to come into the measure."

Washington to Edmund Randolph, April 9, 1787: —

"I very much fear that all the states will not appear in convention."

Washington to David Stuart, July 1, 1787: —

"Whilst independent sovereignty is so ardently contended for, whilst the local views and separate interests of each state will not yield to a more enlarged scale of politics," etc., "the situation of the country" must be "weak, inefficient, and disgraceful!" [See remarks on the following letter.]

The celebrated letter of Washington to "the president of congress," written by unanimous order of the convention of the deputies and subjects of the states, to accompany the constitution proposed by the said convention, for the adoption or rejection of the said states, dated September 17, 1787, contains the following: —

"The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general gov-

ernment of the union; but the impropriety of delegating such extensive trust to one body of men is evident. Hence results the necessity of a different organization.

"It is obviously impracticable, in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. . . .

"In all our deliberations on this subject, we kept steadily in our view . . . the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration . . . led each state in the convention to be less rigid, . . . and thus the Constitution . . . is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable." He finally says that it may not meet "the full and entire approbation of every state;" but that "each will doubtless consider that, had her interests alone been consulted," it might have been "disagreeable or injurious to others."

We see from this letter, as well as from the one dated July 1, 1787, that Washington used the word "sovereignty," as it was frequently used in that day, in the second, subordinate, and improper sense of government. Both state and federal governments were often called sovereignties, — for the reason, probably, that they occupied the same position relatively to the subjects of government that the sovereigns of Europe did, — and it was then, as it is now, sometimes forgotten that those potentates claimed to rule by Divine right, and maintained the claim by force, while our governments, being creations and having only derivative authority, must be subordinate, and not sovereign. In truth, they exist by the will, and rule by the consent of the people. A thousand evidences might be given; but Mr. Webster's admission, in 1833, will suffice: "The sovereignty of government is an idea belonging to the other side of the Atlantic. No such thing is known in North America. . . . With us *all power* is with the people. They alone are sovereign, and they erect what governments they please, and confer on them such power as they please."

And Washington, as will be seen, always recognized the truth that the "*all power*" in question was in the people as states, and that they were only organized and capable of political action as such; and, consistently, each state declared or implied in her organic law that *all power* was inherent in herself, *i. e.* her people. [See constitutions of Massachusetts, New York, and others.]

Another important point of the above letter must be noted here. In speaking of the legislative, executive, and judicial powers to be

"*vested* in the general government," Washington and the convention say: "The impropriety of *delegating* such extensive *trust* to *one body* of men is evident. Hence results the necessity of *a different organization*." It is quite obvious that the "different organization" spoken of is the complete government of three co-ordinate departments, — the legislative one being in two branches, — this government operating directly on the individual people, and executing its own powers; whereas the "one body of men" in the congress to be superseded, had no power to enforce its laws, and no direct contact with the people. It is also obvious that, in both cases, the government was made and empowered by pre-existing and continuing states, and that hence it was impossible that anything other than a federation should be formed. The oft-repeated constitutional phrases, "united states," and "union of states," of themselves are full proof of a confederacy. This explanation is made for the purpose of exposing the mistake made by Story, Webster, and the Supreme Court of the United States, to the effect that the change referred to by the fathers was a change from a federation to "*another system*," *which was not a federation.*

So far from this being true, the fathers generally (including Washington) asserted the new system to be a "confederacy," and, moreover, they stated the actual change wrought, precisely as Washington and the convention do in the above letter. Both ideas, *i. e.* the confederacy and the character of the change, are happily put in juxtaposition by Mr. Spaight, in the convention of North Carolina, of which (after serving in the federal convention) he was an able and active member. Said he: "What the federal convention has done is a mere proposal. It was found impossible to improve the old system, without changing its very form; for, by that system, the three great branches of government are blended together. . . . The proposing of a new system, to be established by the assent and ratification of nine states, arose from the necessity of the case. . . . It is adopted by ten states already. The question then is, not whether the constitution be good, but whether we will or will not confederate with the other states." [IV. Ell. Deb. 206–8. See also Pinckney's remarks, IV. Ell. Deb. 256.] And in Elliott's Debates generally, it will be seen that the change was explained as above, — all the fathers recognizing the states, whose subjects they were, as the parties to, and the sovereigns in, the new system.

We see, then, that Washington and the whole convention of 1787, considered the change being made as the substitution of one *federal* government for another, — the differences between the two being in the mode of organization, and in the direct connection of the new one with the people, instead of the legislatures of the states. The com-

monwealths were recognized by all as the sole constituents of the new, as they had been of the old federation.

That this was Washington's view will become clearer as we advance.

Washington to Patrick Henry, September 24, 1787, sends "copy of the constitution which the federal convention has submitted to the people of these states. . . . Your own judgment will at once discover the good and the exceptionable parts of it. . . . I wish the constitution which is offered had been more perfect, but I sincerely believe that it is the best that could be obtained at this time. As a constitutional door is open for amendments hereafter, the adoption of it, under the present circumstances of the union, is, in my opinion, desirable."

Benjamin Harrison, having received a duplicate of the above letter, wrote a reply, dated October 4, 1787, from which I extract the following, to show that these two great patriots agreed in thinking the constitution defective, and that it might be a failure, as it was an experiment. Surely they could never have supposed that the *voluntary* parties making it, and creating the government under it, would become, by its operation, *involuntary* parties to it, as it is now asserted they are.

"I cannot divest myself of an opinion that the seeds of civil discord are plentifully sown in very many of the powers given, both to the president and congress; and that if the constitution is carried into effect, the states south of the Potomac will be little more than appendages to those to the northward of it. . . . In the *interim*, I shall only say that my objections chiefly lie against the unlimited powers of taxation and the regulations of trade, and the jurisdictions that are to be established in every state, altogether independent of the laws thereof. The sword and such powers will — nay, in the nature of things must — sooner or later, establish a tyranny not inferior to the triumvirate or the centumviri of Rome."

Washington to Madison, October 10, 1787: —

"I scarcely think any powerful opposition will be made to the constitution's being submitted to a convention of this state."

Colonel George Mason, in his objections to the constitution [I. Ell. Deb. 494], expressed the wish that it might be provided in the federal compact that any navigation law should require a two-thirds vote. Washington aptly wrote, in a letter to David Stuart, October 17, 1787, that "no men, bodies of men, or countries, will enter into any compact or treaty, if one of the three is to have a negative control over the other two. . . . There must be reciprocity, or no union."

Now, here is positive proof that Washington considered the present

federal constitution to be a "compact or treaty" "between the states ratifying the same."

Washington to Bushrod Washington, November 10, 1787: —

"A candid solution of a simple question does, in my opinion, decide the dispute, namely, Is it best for the states to unite? . . . If the union of the whole is a desirable object, the component parts must yield a little in order to accomplish it." He then asks what course the opponents would adopt for Virginia, "if nine other states should accede to the constitution? . . . The power under the constitution will always be in the people. It is entrusted for certain defined purposes and for a certain limited period to representatives of their own choosing. . . . Their servants can, and undoubtedly will, be recalled," if they act "contrary to the interests and wishes of the people." "No government can be well administered without powers; yet, the instant these are delegated, although those who are entrusted with the administration are no more than the creatures of the people, act, as it were, but for a day, and are amenable for every false step they take, they are, from the moment they receive it, set down for tyrants."

Washington to Madison, in congress, December 7, 1787: —

He speaks of the "solicitude" felt concerning the prospective decisions of the conventions of the states. After speaking of the motives of several of the states, he continues: "If these, with the states eastward and northward of us, should accede to the federal government, I think the citizens of this state will have no cause to bless the opposers of it here, if they should carry their point."

Washington to Jefferson, January 1, 1788: —

Speaking of the chances of the new constitution being adopted, he says: "Pennsylvania, New Jersey, and Delaware are the only states whose conventions have, as yet, decided on it." He then says: "Connecticut and Massachusetts hold their conventions this month, Maryland in April, and Virginia in June," etc. He apprehends "more or less opposition in the most of the states," formidable in Virginia as well as New York, but hopes success. He finally speaks of the need of "an efficient general government to regulate our commercial concerns, to give us national respectability, and to connect the political views and interests of the several states under one head, in such a manner as will prevent their forming separate connections with European powers, or being involved in European disputes."

Washington to Edmund Randolph, governor of Virginia, January 8, 1788: —

"There are some things in the new form which I readily acknowledge do not and never will obtain my cordial approbation; but, I believe, . . . that, in the aggregate, it is the best constitution that can

be obtained; and that this or a dissolution of the union awaits our choice, and is the only alternative before us."

Washington to Count Rochambeau, January 8, 1788; also to William McIntosh, same date: —

He speaks of "the people of these states," and says: "It [the constitution] is to be submitted to conventions chosen by the people in the several states, and by them approved or rejected." This of itself shows that Washington considered the people, as organized in states, to be absolutely sovereign.

Washington to Madison, in congress, January 10, 1788: —

Speaks of the constitution being likely to produce that "energy, stability, and security which is, or ought to be, the wish of every good citizen of the union." Speaking of the arguments to be used in the convention of Virginia, he "expects the most prevailing one will be, that nine states at least will have acceded to it."

Washington to Marquis De Lafayette, February 7, 1788: —

"It appears to me little short of a miracle that the delegates from so many states, different from each other in their manners, circumstances, and principles, should unite in forming a system of national government so little liable to well-founded objections. . . . With regard to the two great points — the pivots upon which the whole machine must move — my creed is simply, —

"First, that the general government is not invested with more powers than are indispensably necessary to perform the functions of a good government, and, consequently, that no objection ought to be made against the quantity of power delegated to it.

"Secondly, that these powers — as the appointment of all rulers will forever arise from, and, at short stated intervals, recur to, the free suffrage of the people — are so distributed among the legislative, executive, and judicial branches, into which the general government is arranged, that it can never be in danger of degenerating into a monarchy, an oligarchy, an aristocracy, or any other despotic or oppressive form, so long as there shall remain any virtue in the body of the people."

He then proceeds to recognize the truth that the constitution can afford no security against the consequences of "the corruption of the morals" of the people, their neglect of the duty of being vigilant as to the preservation of their rights, and the "successful usurpations that may be established" on the ruins of liberty.

And he concludes by speaking of "the prospect of the constitution's being adopted by nine states or more. Pennsylvania, Delaware, New Jersey, and Connecticut have already done it. It is also said that Georgia has acceded."

Washington to Lafayette, April 28, 1788:—

"The people retain everything they do not, by express terms, give up. Hence a bill of rights is nugatory."

Washington to Jay, May 15, 1788:—

"Should South Carolina, now in session, decide favorably, and the government thereby (nine states having acceded) get in motion, I scarcely conceive that one of the remainder, or all of them together, . . . would incline to withdraw from the union with the other nine."

Washington to General Knox, June 17, 1788:—

"The information of the accession of South Carolina to the new government gives us a new subject of mutual felicitations." Then, expressing the hope that it will have influence on the convention of Virginia, he concludes by saying that there is every prospect that the constitution will be adopted in New Hampshire. "I cannot but hope, then, that the states which may be disposed to make a secession [from the union] will think often and seriously on the consequences."

Washington to Jay, June 8, 1788:—

"I congratulate you on the adoption of the constitution by the convention of South Carolina." He then expressed regret that the New York convention had a majority of anti-federalists, and said: "If this state should, in the intermediate time, make the ninth that shall have ratified the proposed government, it will, I flatter myself, have its due weight."

Washington to Marquis De Lafayette, June 17, 1788:—

"I mentioned [in a letter by Mr. Barlow] the accession of Maryland to the proposed government. . . . The accession of one state more will complete the number (nine) needed to establish it." He evidently thought *states,* and not a nation, *were "to establish it."*

Washington to General Pinckney, June 28, 1788:—

Speaks of the adoption by the Virginia convention, by a vote of 89 to 79. He speaks of the people of Alexandria devoting this day to rejoicing, and their enjoyment being heightened by the news that "New Hampshire had, on the 21st inst., acceded to the new confederacy, by a majority of 11 voices, that is to say, 57 to 46." Mark the important words "*acceded to the new confederacy!*"

He says, further, that they had the pleasure of "pouring a libation to the prosperity of the ten states, that have actually adopted the general government;" and expresses a "hope that the union will now be established on a durable basis. Providence," he continues, "seems still disposed to favor the members of it, with unequalled opportunities for political happiness."

As to North Carolina, he says: "I should be astonished if that state should withdraw from the union." As to New York, he says:

"The majority of the convention seems opposed to the adoption of the new federal system." But he seems to count on the example of the states which have already acted, for he says in conclusion: "The decision of ten states can hardly be without its operation. . . . After New York shall have acted, then only one little state shall remain."

Washington to John Jay, July 18, 1788: "The accession of ten states must operate forcibly with the opposition," etc.

Washington to Madison (in congress), August 3, 1788: ". . . The several parts should submit to the inconveniences, for the benefits they derive from the conveniences of the compact. . . . Toward New York we look for whatever is interesting, till the states begin to act under the new compact, which will be an important epoch in the annals of this country." Note that "the states" are "to act under the new compact."

Washington to Sir Edward Newenham, July 20, 1788, speaks of our having formed "a confederated government, where due energy will not be incompatible with the inalienable rights of freemen."

Washington to Benjamin Lincoln, October 26, 1788: "The constant report is that North Carolina will soon accede to the new union."

He further says: "Whoever shall be found to enjoy the confidence of the states, so far as to be elected Vice-President, will be acceptable to me, should I be President."

We see from the above extracts that Washington constantly recognized the absolute states of Massachusetts, New York, Pennsylvania, Virginia and others, as the high contracting powers then forming the *federal* (or, to coin an English synonym, the *league-al*) constitution. His idea was that the states were associating themselves, to act thenceforward as a union of states (as the constitution repeatedly calls the polity formed), or a "confederacy," which was his own name for the new system.

As the other fathers did, he often used the general phrase "the people," meaning all the people of the country; but it is equally true that he and they meant "the people" as organized. They (the said people) were organized only in states, and they had capacity for political action only as such. They were not organized as a nation, and they could not politically act as such, for they must act according to the law of their political being. Moreover, there is no record of any national action whatever in forming or adopting the constitution.

CHAPTER XI.

WASHINGTON'S POLITICAL FAITH (CONTINUED).

THE foregoing views of the Father of his Country on the constitution were expressed before he became President. They may be styled his contemporaneous exposition of the polity then being established. His evidence is of the highest character.

The present chapter, which I equally value, but do not offer as testimony, consists of his expressions after becoming President, and is a most precious legacy of wisdom to his countrymen. In the process of administering the federal polity, he closely observed and deeply studied its character and workings; and in all he said and wrote, he treated of the system as a union of republics, the motives of which are amity and mutual interest, and the purposes of which are "the common defence," "the general welfare," and the security of "the blessings of liberty."

Moreover, he not only called the system "the new confederacy," and the states "the members of the union," but he regarded the constitution as establishing the only relations between the states, and the said states as the sole actors in the union, and the exclusive sources of political power. The truth is, Washington and the rest of the fathers thought that, as all the territory and all the people belonged exclusively to the states, any general constitution must be made by them, must belong to them, must provide for their union, and must be worked for their benefit and with their authority. The country was theirs, and the government their servant, just as much as his household belonged to him, and the domestics of it were under his control. He and they evidently assumed that all rights were state rights, all citizens state citizens, all sovereignty state sovereignty, all allegiance state allegiance, and all treason state treason!

These ideas may seem strange to some; but I believe Washington, so far as he thought of them, took them for granted, and never wrote an inconsistent word. But let us proceed with his record, remembering that, after the inauguration of the government, his testimony is from better insight, and against his interest and his possible love of power.

Washington to Jefferson, February 13, 1789, speaks of "the measures taken by the different states for carrying the new government into execution."

Washington to Innes, March 2, 1789, speaks severely of "those who, by sowing the seeds of disaffection, may attempt to separate any portion of the united states from the union."

Washington to Governor Johnston, of North Carolina, June 19, 1789, speaks of the probability of North Carolina "speedily acceding to the new general government," and of the "subject of the most momentous consequence" to be dealt with by the North Carolina convention. "I mean," says he, "the political relation which is to subsist hereafter, between the state of North Carolina and the states now in union, under the new general government." Mark these last words.

Washington to Gouverneur Morris, 1789: ". . . The national government is organized; . . . opposition to it is no more, or hides its head; . . . it is hoped it will take strong root, and that the non-acceding states will soon become members of the union."

Washington to Edmund Randolph, Attorney-General, February 11, 1790, speaks of an act which must "be passed to extend the judicial power of the united states, to North Carolina."

Washington to Fenner, governor of Rhode Island, June 14, 1790, congratulates him on the "ratification of the constitution by the convention of Rhode Island," and continues: "Having now attained the desirable object of uniting, under one general government, all those states which were originally confederated," etc., he then says, "our bond of union is now complete, and we are once more as one family."

Washington to Count De Segur, July 1, 1790: "The union of states is now complete, under the new government, by the late accession of Rhode Island to the constitution."

Washington, commissioning the Secretary of the Treasury to borrow money, August 28, 1790, authorizes him "to borrow on behalf of the united states, within said states or elsewhere," $14,000,000, "and to make such contracts as shall be necessary and for the interest of the said states."

Dr. David Stuart writes to Washington, March 10, 1792: —

"A spirit of jealousy, which may become dangerous to the union, toward the Eastern states, seems to be growing fast. It is represented that the northern phalanx is so firmly united as to bear down all opposition, while Virginia is unsupported, even by those whose interests are similar to hers."

Washington replied, March 20, 1792: "I am sorry such jealousies as you speak of should be gaining ground and poisoning the minds

of the Southern people." He then goes on to speak of diversities of interests and feelings between sections and parts of states and even counties. "Yet," said he, "it did not follow that separation was to result from the disagreement. To constitute a dispute, there must be two parties. To understand it well, both parties and all the circumstances must be fully heard; and to accommodate differences, temper and mutual forbearance are requisite. Common danger brought the states into confederacy, and on their union our safety and importance depend. A spirit of accommodation was the basis of the present constitution. Can it be expected, then, that the Southern or Eastern parts of the empire will succeed in all their measures?" He then speaks of the unity or concert of Eastern states being likely to make them generally successful, and asks the question, "If the Eastern and Northern states are dangerous *in union* [italics his own], will they be less so in separation? If self-interest is their governing principle, will it forsake them, or be governed by such an event? . . . Then, independently of other considerations, what could Virginia, and such other states as might be inclined to join her, gain by a separation?"

Washington to Hamilton, July 29, 1792:—

He enumerates the objections taken to the policy of the government and the interpretations of the constitution, one of which is characterized as a disposition evinced by a certain faction to disregard the "limitations imposed by the constitution on the general legislature, — limitations on the faith of which the states acceded to that instrument."

Washington to Hamilton, August 26, 1792: He counsels mutual forbearance, conciliation, accommodation, "and such healing measures as may restore harmony to the discordant members of the union, and the governing powers of it." "Without these, I do not see how the union of the states can much longer be preserved."

Washington to Gouverneur Morris, October 20, 1792:—

Speaks of the Indians being under "an influence [British which is hostile to the rising greatness of these states."

And his letter to the Earl of Buchan, of April 22, 1793, heretofore quoted, shows how completely he was governed by the idea of *distinct and sovereign political bodies* self-united: "I send you the plan of a new city about the centre of *the union of these states.*"

To any reflecting mind, the last five letters, as well as numerous other expressions, show that Washington not only regarded the union of states as purely voluntary, and motived by a community of political faith and sentiment, by amity, and by the mutual interest of safety, economy, and means of wealth and power, but that he thought the

constitution defective, experimental, and dissoluble. [See his letters to Gen. Knox and Gen. Lafayette, in August and September, 1787; also the above quoted one of September 24, 1787, to Patrick Henry, and others. Nay, more, he recognized motives or causes tending to separation as likely to arise, and he adjured "the people of these states," who, as commonwealths, had formed "the confederacy," as he called it, to be conciliatory and compromising, and to frown down all attempts to cause a separation of the states.

The following letters and extracts, from the Farewell Address, show that he considered good will and mutual interest as the only ties binding the states, and moral suasion as the only force to be relied on to prevent the sundering of those ties. This must be so, for the convention of 1787, including him, unanimously spurned the idea of coercion of states; and subsequently the states, *nem. con.*, amended the constitution to prevent even judicial coercion of states. [See Amendment XI.] The fathers all thought the states only bound by virtue of voluntary engagements; and, to use the language of Webster at the close of his life, that "the constitution is the only bond of the union of these states."

Washington to R. H. Lee, August 22, 1785: —

"There is nothing which binds one country or state to another but interest. Without this cement, the Western inhabitants can have no predilection for us, and a commercial connection is the only tie we can have upon them." He was speaking of the people of the Ohio and Mississippi valleys.

Washington to R. H. Lee, July 19, 1787: —

"Till you get low down the Ohio, I conceive that it would be the interest of the inhabitants thereof to bring their produce to our ports; and sure I am there is no other tie by which they will long form a link in the chain of federal union."

Extracts from Washington's Farewell Address, with explanations. It is well to remark at the outset that there is no inconsistency between the address and the extracts heretofore given. To promote "*the happiness of the people of these states*," is the professed object he has in view; and he regards the motives of amity, fraternal feeling, and mutual interest "as the sacred ties which bind together the various parts." And the presumption is inevitable that, if he had foreseen that fraternal feeling would give place to mutual dislike, and amity to enmity, he would have recommended separation as preferable to bitter contentions, and the unrepublican disposition to settle disputes by arms; and he would have advised resort to the divine idea of secession, as expressed by Abraham to Lot; and surely that could not have been so bad as the great American civil war, — the curse of the

nation and the infamy of the age! He never contemplated a union of force, — a union to be preserved by coercion of the component states, — and not a line he ever wrote (even in the farewell address) is consistent with such an idea. The italics will be mainly mine.

In the beginning of the address, he prays "that Heaven may continue to you the choicest tokens of its beneficence; that your union and brotherly affection may be perpetual; that *the free constitution, which is the work of your hands,* may be sacredly maintained; that its administration in every department may be stamped with wisdom and virtue; that, in fine, *the happiness of the people of these states,* under the auspices of liberty, may be made complete.

"The unity of government, which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence, — the support of your tranquillity at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth, as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union, to your collective and individual happiness."

He is addressing "the people of these states," and "the government" — the "unity" of which, he says, is so dear to them — is the government which they made, acting as states, and which necessarily remains subject to the wills that gave it existence. This is an argument to the people of states, who, in imparting or withdrawing power, must act according to the law of their political being, as states. We have heretofore seen his repeated assertions that the union is a "confederacy."

"While, then, every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find, in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and, what is of inestimable value, they must derive from union an exemption from those broils and wars *between themselves,* which so frequently afflict *neighboring countries not tied together* by the same government, which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues would stimulate and embitter. Hence, likewise, they will avoid the necessity of those

overgrown military establishments, which, under any form of government, are inauspicious to liberty, and which are to be regarded as particularly hostile to *republican liberty;* in this sense it is that your union ought to be considered as a main prop of your liberty, and that the love of the one, ought to endear to you the preservation of the other.

"These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the union as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? Let *experience* solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue to the *experiment.* It is well worth a fair and full *experiment.* With such powerful and obvious motives to union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who, in any quarter, may endeavor to weaken its bands."

Of course "the continuance of the union" was "the primary object of patriotic desire," as long as it was the instrument of "the people of these states," in preserving their safety and happiness, and as long as its government was the servitor of said people. But the above shows that it was undoubtedly Washington's view, that if a full and fair experiment proved that this "common government" could not "embrace so large a sphere" without defeating, instead of promoting, the object of government, *i.e.* "the happiness of the people of these states," it might, by its makers, be brought to an end, having no iron strength and eternal existence of its own, but only existing at the will of its sovereign creators.

"To the efficacy and permanency of your union, a government for the whole is indispensable. No alliance, however strict, between the parts can be an adequate substitute; they must inevitably experience the infractions and interruptions which all alliances in all time have experienced. Sensible of this momentous truth, *you have improved upon your first essay, by the adoption of a constitution of government better calculated than your former for an intimate union, and for the efficacious management of your common concerns.* This government, *the offspring of your own choice,* uninfluenced and unawed, adopted upon full investigation and mature deliberation, *completely free* in its principles, and in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect

for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty."

In this quotation we have further positive proof that Washington did not consider that there was "a change from a confederation to another system;" for, in the passage underscored, he regards the constitution as another compact, and the new system as a union of states, as the constitution calls it, — "a more perfect union" of the states, as the preamble expresses it. "This government" is the offspring of our "own choice." Whose choice? Whose will is referred to? Of course "the people of these states." They were only organized and capable of acting as states. They did act absolutely as states. Of course, then, Washington could but say, as he did in his letter heretofore quoted, of October 17, 1787, that the constitution was a "compact or treaty;" and as he did in his letter, also heretofore quoted, of June 28, 1788, that the system proposed was "a new confederacy," that is to say, a new league of states, — a "more perfect union." Who will now deny that Washington considered "the united states of America" a federation of sovereignties?

His political principles were those of Wilson, Dickinson, Hamilton, Madison, Jay, and other leading federalists, who most elaborately explained the new federal system to the people. This is well known by all who understand the subject; but to prevent cavil and evasion, I will show his special adoption of their theory of the absolute sovereignty of the states in the union.

Washington to David Stuart, October 17, 1787: "Dear Sir, — As the enclosed Advertiser contains a speech of Mr. Wilson, as able, candid, and honest a member as was in the convention, which will place the most of Colonel Mason's objections in their true light, I send it to you. The republication of it, if you can get it done, will be serviceable at this juncture."

The leading and most striking parts of this speech were as follows: In showing that a bill of rights was not needed in the federal constitution, because not being given, the said rights were reserved already, he said: "It would have been superfluous and absurd to have stipulated with a federal body of our own creation, that we should enjoy those privileges of which we are not divested, either by the intention or the act which has brought that body into existence."

Further along, he said, in explaining the reason why the federal convention did not deal with subjects already provided for in the state constitutions: "Let it be remembered, then, that the business of the federal convention was not local, but general; not limited to the views and establishments of a single state, but co-extensive with

the continent, and comprehending *the views and establishments of thirteen independent sovereignties.*" [Pennsylvania Herald, Oct. 10, 1787.]

Another Pennsylvania statesman, Tench Coxe, said at the same time, on the same matter, that such subjects "could not be mentioned in a contract among sovereign states."

The above were unquestionably the views of Washington: and strange as it may seem to those who have been taught by Story and Webster, the fathers took them for granted, and acted upon them; and the federal constitution is entirely based upon the principles of them; and in those days neither friend nor foe ever called them in question.

Washington to John Vaughan, April 27, 1788: "The writer of the pieces signed Fabius, whoever he is, appears to be master of the subject; . . . an extensive republication of them would be of utility, in removing false impressions."

Fabius was John Dickinson, who had been President of both Pennsylvania and Delaware. He was a member of the federal convention, and was recognized as one of the leading statesmen of that period. What were the views, evincing "mastery of the subject;" worthy of "extensive republication," as well as calculated to "remove false impressions?" The following extracts from II. "Political Writings of John Dickinson," will show. The italics are in the original.

Speaking of the danger to liberty, in the new system, he says, writing early in 1788: "*the power of the people*, pervading the whole system, by frequent elections, together with the *strong confederation of the states*, forms an adequate security against every danger that has been apprehended." "The objectors agree that the *confederation of the states will be strong*, according to the system proposed," etc.

"They [the House of Representatives], and *the Senate*, will actually be, not only *legislative*, but also *diplomatic* bodies, perpetually engaged in the arduous task of reconciling in their determinations, the interests of several *sovereign* states."

Speaking of the danger of usurpation by the federal government, he says, "the trustees or servants of the several states will not dare, if they retain their senses, to violate the *independent sovereignty* of their respective states, THAT JUSTLY DARLING OBJECT of American affection, to which they are responsible. But a bad administration may take place; what is then to be done? The answer is instantly found: Let the *fasces* be lowered before the *supreme sovereignty* of the people. It is their *duty to watch*, and their *right to take care* that the constitution be preserved; or in the Roman phrase, on perilous occasions, *to provide that the republic receive no damage.*"

"It is said such territory has never been governed by a confederacy of republics; granted; but where was there ever a confederacy of republics in such territory, *united, as these states are to be*, by the proposed constitution?" etc.

"America is, and will be, divided into several sovereign states, each possessing every power proper for *governing, within its own limits, for its own purposes*, and also for *acting as a member of the union*."

I have quoted copiously, as John Dickinson's writings are not accessible to many, and as they show Washington's views very clearly and forcibly.

Let us now show his approval of the Federalist, and then quote its expressions: —

Washington to David Stuart, November 30, 1787: —

After stating that "some writers wish to see this union divided into several confederacies," and deprecating the idea, he writes as follows: —

"As an antidote to these opinions, and, in order to investigate the ground of objections to the constitution which is submitted, the Federalist, under the signature of Publius, is written. . . . They [the articles] are written by able men, and before they are finished, will, or I am mistaken, place matters in a true point of light. Although I am acquainted with the writers, I am not at liberty to mention names; nor would I have it known that they [these papers] are sent by *me* to *you* for promulgation."

He was in the confidence of the writers; he and they were ardent federalists; and they concurred with him in political philosophy. He often specially sanctioned what they wrote; aided in the "promulgation" of their writings; and in his subsequent administration of the new governmental agency, he was in close alliance and sympathy with them, personally and politically.

What then did Jay, Hamilton, and Madison write, in expression of their own and Washington's views, concerning the proposed general polity?

The very first article of the Federalist indicated the object to be, the *continuance of the union of states*, under a new *federal government*; or, as the constitution expresses it, "to form a more perfect union." And, in that, and the two or three articles immediately following, the question is discussed whether there should be an association of states or not, and if yea, whether "three or four confederacies would be better than one." This is Jay's expression, and he elsewhere called the polity a "union of states" and a "confederacy."

In concluding the great discussion, Hamilton states, in 85 of the Federalist, that, by the compact proposed, "thirteen independent

states were to be accommodated in their interests, or opinions of interest;" and that hence arose the necessity of making such a system, as would "satisfy all the parties to the compact." And, in the same article, he argues that the failure of this plan would be a "dissolution of the confederacy." And in the New York ratifying convention, about the same time, he described the system provided for in the proposed constitution, as "*a confederacy of states.*" [II. Ell. Deb. 353.]

In Article 39, it is stated that "each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new constitution will, if established, be a *federal*, and not a *national* constitution." This is Madison's, italics and all.

In Article 40 Madison continues the subject, meeting the objection that the new system was so different from the preceding one, that it was not within the intention of the states: "Will it be said that the *fundamental principles* of the confederation were not within the purview of the convention, and ought not to have been varied? I ask, what are those principles? Do they require that, in the establishment of the constitution, the states should be regarded as distinct and independent sovereigns? They are so regarded by the constitution proposed."

Article 20 — the joint production of Hamilton and Madison — concludes with the following remarkable and decisive passage: "Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred. The important truth which it unequivocally pronounces in the present case is, that a sovereignty over sovereigns, a government over governments, a legislation for communities as contradistinguished from individuals; as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting *violence* in the place of *law*; or the destructive *coercion* of the *sword*, in the place of the mild and salutary *coercion* of the *magistracy*."

All the numbers of the Federalist, and all of Washington's writings, are consistent with the above passages. The extract from Article 20 is one of the numerous decisive proofs that the states were never intended to be subject to the government; for they were the sources of all power — were republics, *i. e.* self-governing states. And it is amazing that anybody should ever have been inconsiderate or wicked enough to say that the states are subject to their own compact, and the government they created by it. Yea, verily, it is a solecism, as Hamilton and Madison above say, to talk of "a sovereignty over sovereigns, a government over governments, a legislation

for communities as contradistinguished from individuals." And it shows either ignorance of history, or *suppressio veri*, for expositors of the constitution to deny that the states purposely excluded coercion of states from the compact; and afterwards *nem. con.*, provided by Amendment XI. against even judicial federal coercion of them.

We find, then, from Washington's own expressions, his views to have been that the states "*established*" the union; that the instrument providing for it is the "*compact or treaty*" *of the states;* that the object accomplished was the forming of "*a new confederacy*," *i. e.* "a more perfect union" of the states, than the previous pact provided for; and that the states were not only *voluntary parties to*, but they were to be *voluntary actors in*, the union.

Washington always took it for granted, that the states were sovereign bodies of people; and that the federal compact, and the agency created, were simply the instrumentalities of the states for self-government, and remained of course subordinate to them.

Now, in order to see Washington's clearness and breadth of view, and his admirable consistency throughout, let us glance back at his statement of the great political *desiderata* for our country, in his circular letter to the governors of the states in 1783, on the occasion of his laying down his office as Commander-in-Chief: —

1. A "union of the states under one federal head."
2. A "sacred regard for public justice."
3. A proper peace establishment.
4. The cultivation of friendly feelings among all the people of the country, etc.

Washington never lost sight of these objects; he always took it for granted that the states were the sole actors in federalizing themselves; and he finally had the satisfaction to see the work done precisely as he forecasted. The thoughtful reader cannot fail to see that Washington was much more admirable as a statesman and political philosopher, than is commonly supposed.

CHAPTER XII.

VERBAL JUGGLERY.

AFTER contrasting the doctrines of "the two Washingtons," it is well to bring to view, in the same line of investigation, the two sets of so-called definitions of Noah Webster, as to the matter in hand, — one genuine and the other counterfeit.

With sapping and mining industry, equal to that of a species of rodent vermin, and quite as difficult to follow and counteract, a certain class of teachers and leaders have undermined to its ruin the sacred temple of constitutional freedom. Unfortunately they and their disciples or followers mainly control the political propagators, print, press, publishers, politicians, and, in short, the most of the means of political teaching in the whole land.

Strategic Exposition. — In 1830–3, Daniel Webster abandoned his previous and sound constitutional views; and he is charged with having, in the great controversy of that time, played most skilfully "with double senses and with false debate." But I presume that his errors were a part of his faith, and that his incorrect facts and unsound premises were based upon the *data* furnished him by others. At all events — standing on the plane of his noble efforts in behalf of the union — we go down a steep and long declivity to reach the artifices now to be exposed.

Said he, in his speech of 1833, "Words are things . . . of mighty influence; because a just conclusion is often avoided, or a false one reached, by the adroit substitution of one phrase or one word [or he might have said one definition] for another." He evidently saw that even the strongest logical position in any argument could be turned, by changing the definitions of the chief words of it, and having them accepted as "public convictions."

And a minority politician, in the early part of the present century, is said to have remarked, in substance: "The terms are against us, but their meanings are subject to usage." Sophists seem to have

accepted these hints, and labored assiduously ever since to produce a desired usage, and a "public conviction" of new and false meanings, tending towards, if not powerfully aiding, consolidation and imperialism. Many an "adroit substitution" has since, with flagitious cunning, been made, — the latest, most conspicuous, and most banefully influential being the counterfeit definitions, which are the subject of this chapter, and which are coined and circulated throughout the land as Noah Webster's.

Phrasing the process to be exposed, as I do above, is dignifying it; for it is the appending of Noah Webster's most venerated and potential name to declarations of fact and opinion, directly and flagrantly opposed to his life-long views, and "passing the counterfeits" as his statements.

We early learn the meanings of the leading words, which affect all the affairs of life. They are often of vital moment. If, after putting our rights in language, we find the definitions of our words changed, we may suffer great wrong without remedy. The discovery may sometimes amuse us, — much as "thimble-rig" would, — but we must ever have the bitter reflection that this sapping and mining process affects alike our language and our polity, and that the poison of error is imbibed as truth by the generation to which we owe the supreme duty of teaching sound principles, and the sacred verities of our constitutional freedom.

The American "Old Man of the Mountain." — If the "school" is responsible for the foregoing deceptions, and the sophistries yet to be exposed, have we not found the American "Sheik al Gebel," — the "Chief of the Assassins" of liberty? The honor and conscience of perverters in general are estimated, and the character of them portrayed by Gouverneur Morris, the statesman, as follows: "But, after all, what does it signify that men should have a written constitution, containing unequivocal provisions and limitations. The legislative lion will not be entangled in a logical net. The legislature will always make the power which it wishes to exercise. . . . The idea of binding the members by oaths is puerile. Having sworn to exercise the powers granted, according to their true intent and meaning, they will, when they desire to go further, avoid the shame, if not the guilt, of perjury, by swearing the true intent and meaning to be (according to their comprehension) that which suits their purpose." [III. Life of Morris, letter dated Dec. 22, 1814.]

Noah Webster's real Doctrines. — Noah Webster died in 1843, aged eighty-five, after having attained the first rank of great Americans. He was one of the ablest and most efficient of those eminent patriots called "the fathers," who devised the new federal system and

secured its adoption. In 1784–5, he wrote and published his "Sketches of American Policy," advocating a general government that should act, not on states, but directly on individuals, just as the state governments did, and should possess powers to effectuate its laws in like manner. When the federal system of 1787 was devised, he published in its favor "An Examination of the Leading Principles of the Federal Constitution," and in the American Magazine, founded and edited by him in 1787–8, he monthly and most ably exposed the essential ideas and traits of the system. I now present some extracts, not only to show the deceptions referred to, but to instruct the people as to their real federal polity, and exhibit to them, in compendious form, this great man's abiding political faith. "The whole body of people in society is the sovereign power or the state, which is called the body-politic. Every man forms a part of this state, and so has a share in the sovereignty; at the same time, as an individual, he is a subject of the state." [Am. Mag. Dec. 1787.]

The States above Constitutions of Government. — "The individuals who compose a political society or state, have a sovereign right to establish what form of government they please in their own territory." [Ibid.]

In the number for January, 1788, he said: ". . . No constitutions in a free government can be unalterable. . . . A state is a supreme corporation that never dies. Its powers, when it acts for itself, are at all times equally extensive, and it has the same right to repeal a law this year as it had to make it the last. If, therefore, our posterity are bound by our constitutions, and can neither amend nor annul them, they are to all intents and purposes our slaves. . . . We have no right to say that our posterity shall not be judges of their own circumstances. The very attempt to make perpetual constitutions is the assumption of the right to control the opinions of future generations, and to legislate for those over whom we have as little authority as we have over a nation in Asia."

The Aim is to preserve the States complete. — He said in reply to objections, that "the federal constitution will preserve our equal republican forms of government; nay, that it is their only firm support, and the guaranty of their existence." [Ibid.]

The object universally held in view was the preserving of the states intact; and numerous quotations of similar tenor to the following, from Chancellor Livingston, in the New York ratifying convention, could be quoted: "Our existence as a state depends on a strong and efficient federal government."

Just so Noah Webster considered *the absolute preservation of the states* to be the object of their union, as will be seen in the following

extract from his aforesaid "Examination," etc. The italics are his. "The states, in their separate capacity, cannot provide for the *common* defence; nay, in case of a civil war, a state cannot secure its own existence." He continues that it is necessary for them "to unite and provide for the common defence and general welfare," and that hence "a power over the whole united states, adequate to these general purposes," should be constituted. "But," continued he, "the states, by granting such power, do not throw it out of their own hands; they only throw each its proportion into a common stock; they merely combine the powers of the several states into one point, where they *must* be collected before they can be exerted. But the powers are still in their own hands, and cannot be alienated till they create a body independent of themselves, with a force at its command superior to the whole yeomanry of the country." [New Haven Gazette, Nov. 29, 1787.]

As to the equality and supremacy of the states in the union, he said, in the first number: "The equality of representation, which was the result of compromise and mutual concessions, establishes the equal sovereignty of each state." [Am. Mag., Dec. 1787.]

In showing that a bill of rights was not needed in the federal constitution, he said: "A bill of rights against the encroachments of kings and barons, or against any power independent of the people, is perfectly intelligible; but a bill of rights against the encroachments of an elective legislature, that is, against our own encroachments on ourselves, is a curiosity in government." [Ibid.] In other words, we want no bill of rights from an agency we have created, and that has neither existence nor power that we do not give to it, as such agency, to use for us.

Electees and Agents. — Noah Webster, in common with all the fathers, regarded all federal officials (*i. e.* the whole federal government) as electees and agents of the states.

In a later number than the last mentioned, in reviewing the papers of the Federalist, then currently appearing, he spoke of the election of representatives *by the separate people* of the states; of each *state* endowing its own voters; of the appointment of senators by *the state legislatures;* and of the appointment, *by the states*, of electors for the President.

In February, 1788, he wrote that "the representative of a people is, as to his powers, in the situation of an attorney, whose letters commission him to do everything which his constituent could, were he on the spot."

A Compact and a Constitution. — The federal instrument involves *a compact*, because it has the assent of several wills, and *a*

constitution of government, because it provides for constituting or establishing and empowering the said government. In a subsequent number, he cited Montesquieu's admission to prove that "*a confederation* of republics may be so formed as to unite the happiness of free states with the vigor of monarchies. The new constitution may be an improvement on the Lycian *league*, which that writer proposes as a model."

And he quotes and agrees with Hamilton, in number 85 of the Federalist, that, in forming a "constitution of the united states," "*thirteen independent states* are to be accommodated in their interests or opinions of interest," "in such a manner as to satisfy all *the parties to the compact*."

He, like Washington, Livingston, Hamilton, Madison, and all the leading fathers, considered that *a league of states* was being formed by the federal instrument; that they were to govern themselves as republics; that their federal agency was to have no unwritten powers; and that they were to keep all they did not express; and in the subsequent numbers, he publishes the states' approvals and ratifications, that made them a "union of states," or "united states," as they called themselves.

Noah Webster never changed. — In these views, he was consistent through a life spent in profound study of such subjects, — *i. e.* for more than fifty years. All his definitions precisely conform to them. The American people and all coming generations could, in his great dictionary, learn not only the true meaning of all the "mighty words" in which American political history and philosophy, the constitution and the debates on it, were written, but the true exposition of that institutional freedom which was the peculiar boast and pride of the leagued or associated states or peoples of America.

The "Adroit Substitutions" in Webster's Dictionary. — With much painstaking and ingenuity, false definitions have been coined and substituted for those of Noah Webster, as to all the important political and constitutional words of his dictionary. In contrasting the true with the false, the former will be those of 1844, the year after his death, and the latter those of 1864. The first column will exhibit the correct and beautiful theory, as held by all the fathers, of the American sisterhood of states, — that association of "moral persons," who agreed, for strength, safety, convenience, economy, and united wisdom, to join their authority, intellects, wills, and power, in federal self-government; while the other shows the double fraud of representing the united states to be a state, the states to be counties or provinces, and the vicarious government to be a sovereign with absolute supremacy; and ascribing such wickedness and folly to the

revered lexicographer, all of whose writings and definitions, through a long life, give to such theory direct contradiction. The italics will mainly be my own.

Let us begin with the definition of

SOVEREIGNTY.

In the edition of 1844 it is as follows: —

"SOVEREIGN. *a.* Supreme in power; possessing supreme dominion; as a sovereign prince.

"SOVEREIGN. *n.* A supreme lord or ruler; one who possesses the highest authority, without control.

"SOVEREIGNTY. *n.* Supreme power; supremacy; the possession of the highest power, or of uncontrollable power."

[Of course no material change of the definition of a superlative word could have been ventured on. The "play with double sences," however, will be seen in the frequent use of the word in the sense of *government*, as well as *supreme political authority*. As sovereignty is in "the people," it cannot be in the elected rulers.]

Of course only sovereignties could compact in the premises, constitute government over their subjects, and delegate their powers to be used in ruling them.

After the revolution, "the people" were the distinct bodies-politic, or "moral persons," who acted in every political movement. Their individuality and entireness of body, mind and *will* as commonwealths, must have continued till the end of their joint act of federation; and hence they could not be less than sovereign in the union. In associating, they earnestly and exclusively contemplated and sought self-preservation, and no sign of any *consent* to a change of character or authority is to be found anywhere. The sovereignties could but be the communities existing *after*, just as they did *before*, the general government was constituted.

Let us now see the definitions of 1844 and 1864 in contrast.

"STATE," "COMMONWEALTH," AND "REPUBLIC."

In the edition of 1844 is to be found the following: —

"STATE. *n.* A political body or body-politic: the whole body of the people united under one government, whatever may be the form of government. 'Municipal law is a rule of conduct prescribed by the supreme power in a state.' — *Blackstone.* More usually, the word signifies a politi-

In the edition of 1864 is to be found the following: —

"STATE. *n.* In the United States one of the commonwealths or bodies-politic, *the people of which make up the body of the nation*, and which, under the national constitution, stand 'in certain specified relations with the *national* government, and are *invested* as commonwealths, with full

cal body, governed by representatives; a commonwealth, as the states of Greece; the states of America."

"COMMONWEALTH. *n.* An established form of government or civil polity; or more generally a state; a body-politic, consisting of a certain portion of men, united by compact, or tacit agreement, under one form of government and system of laws. A commonwealth is properly a free state; a popular or representative government; a republic; as the commonwealth of Massachusetts. The word signifies, strictly, the common good or happiness; and hence the form of government supposed best to secure the public good." [It is further stated that the term is applied to Great Britain and other bodies-politic, whose forms of government are considered as free or popular.]

In the same edition is the following: "REPUBLIC. *n.* A commonwealth; a state," etc.

power in their several spheres over all matters not expressly inhibited."

[The sophists who made up the edition of 1864, feeling responsible for the "public convictions" heretofore noticed, and perceiving that the former definitions of "state," "commonwealth" and "republic" exhibited the states as distinct bodies, not only in making the union, but in existence afterwards, and that the giving of "Massachusetts" and "Great Britain" as precisely similar instances, was fatal to the theory upon which the said "public convictions" were based, carefully left out the instances, and changed such portions of the definitions as they thought militated against their theory.]

Noah Webster then makes no distinction between ours and foreign states. Neither does the constitution. [See Art. III., § 2, and Amendment XI.] A state, nation, or power is distinct in existence, independent in authority, and without a superior. If one of our communities is a state at all, she is sovereign. If less than a state, she is a county or province, and is remanded to colonial or provincial vassalage. Hence we see that Noah Webster, like all the fathers, teaches that the states are commonwealths, distinct, independent, and sovereign in mind and will; and he assumes that they could neither politically exist, nor politically act, in any other form, and hence that they could be associated only by a *fœdus*, and as a federation. Doubtless he considered it as absurd to think of consolidating thirteen moral persons or states into one, as it would be to weld thirteen natural persons into a giant!

COMPACT AND CONSTITUTION.

In the edition of 1844 is the following: —

"COMPACT. *n.* An agreement; a contract between parties; a word

In the edition of 1864 is the following: —

"COMPACT. *n.* An agreement between parties; a covenant or con-

that may be applied in a general sense to any covenant or contract between individuals; but it is more generally applied to agreements between nations and states, as treaties and confederacies. *So the constitution of the United States is a political contract between the states,*" etc.

"CONSTITUTION. *n.* The established form of government in a state, kingdom, or country; a system of fundamental rules, principles, and ordinances for the government of a state or nation. In free states, the constitution is paramount to the statutes or laws enacted by the legislature, limiting and controlling its power; and in the United States the legislature is created, and its powers designated by the constitution."

tract, either of individuals or of nations." [The rest of the former definition is suppressed.]

"CONSTITUTION. *n.* The principles or fundamental laws which govern a state, or other organized body of men, and are embodied in written documents, or implied in the institutions and usages of the country or society."

In the above two definitions, Noah Webster says the states are joined by their own *wills*, in "a political contract between the states," in which they constituted the government; that "the legislature [*i. e.* congress] is created, and its powers designated, by the constitution;" and that this "constitution is paramount to the statutes or laws enacted by" congress, and "limits and controls its power." Hence he teaches that "the *constitution* of the * states," and "the government" it *constitutes*, are *subject to the states*. Sufficient proof is found in the frauds here exposed, to show that the perverters themselves understood his teachings so, did not dare to let them remain, and made the changes in the hope of deceiving "the people."

DELEGATION AND DELEGATE.

In the edition of 1844 is the following:—

"DELEGATION. *n.* A sending away; the act of putting in commission, or investing with authority to act for another; the appointment of a delegate. 2. The persons deputed to act for another, or for others. Thus the representatives of Massachusetts in congress are called the delegation, or whole delegation.

In the edition of 1864 is the following:—

"DELEGATION. *n.* . . . 2. One or more persons deputed to represent others, as in a convention, in congress, etc.; as the delegation from Massachusetts."

"DELEGATE. *v. t.* To send away; appropriately to send on an embassy; to send with power to transact business as a representative. 2. To entrust; to commit; to deliver to another's care and exercise; as to delegate authority or power to an envoy, representative or judge."

[The definitions of these two words are not much changed, except in suppressing the truth, that the members of congress are "*the representatives of Massachusetts in congress.*"]

In these definitions, Noah Webster keeps republicanism in view; the republics, *i. e.* "the people," are to govern themselves through their agents, who, being their citizens, are their subjects and servants. These are the government, and the powers they as rulers wield, must be "delegated" or entrusted, and the government must be *a created agency*, with *derivative authority*, and cannot be anything else.

Moreover, he says that the members, both of the senate and of the lower house of congress, are "the delegation" of a state, representing it as such. [See also the definition of "congress," *infra.*] The states, then, are self-ruling commonwealths associated — "states united," to use his own phrase; and the general legislature is a congress of states. [See "congress," *infra.*]

If this was not Noah Webster's theory, why should the direct opposite of it be now foisted into his definitions, while all his statements and illustrations that support said theory, are suppressed?

UNION, AND E PLURIBUS UNUM.

In the edition of 1844 is the following: —

"UNION. *n.* 7. *States united.* Thus the united states are sometimes called the union.

"E PLURIBUS UNUM. One composed of many. The motto of *the United States*, consisting of many *states confederated.*"

In the edition of 1864 is the following: —

"UNION. *n.* 3. That which is united or made one; something formed by a combination or coalition of parts or members; a confederation; a consolidated body; as the united states of America are often called the union.

"E PLURIBUS UNUM. One out of many. One composed of many; the motto of the United States, as being one government formed of many independent states."

Here we find that Noah Webster declared the "union" to be "*states united*" — "*many states confederated;*" but that after his death, his name was affixed to the untruth, that "union" means "*a consolidated body; as, the united states are often called the union;*" and to the gross absurdity, that *E pluribus unum* means, in substance,

that several formerly independent states are consolidated into one government, and are no longer independent states, but provinces.

FEDERAL, FEDERALIZE, CONFEDERATION.

In the edition of 1844 is the following: —

"FEDERAL. *a.* From Latin *fœdus*, a league. 1. Pertaining to a league or contract; derived from an agreement or covenant between parties, particularly between nations. 2. Consisting in a contract between parties, particularly and chiefly between states or nations; founded on alliance by contract or mutual agreement; as a *federal* government, *such as that of the United States.*"

In the edition of 1864 is the following: —

"FEDERAL. *a.*" [Then follows the substance of the old definition, except that the words "founded on alliance by contract or mutual agreement; as, a federal government, such as that of the United States," are left out.]

"2. Specifically, composed of states or districts, which retain only a subordinate and limited sovereignty, as the *union* of the United States, or the *Sonderbund* of Switzerland: constituting or pertaining to such a government as the federal constitution," etc.

"FEDERALIZE. *v. t.* or *i.* To unite in compact as different states; to confederate for political purposes. — *Barlow.*

"CONFEDERATION. *n.* 1. The act of confederating; a league; a compact for mutual support; alliance, particularly of princes, nations, or states. 2. The United States are sometimes called *the confederation.*"

[In the edition of 1864 the second of the opposite definitions is left out.]

Here again we find Noah Webster, like Washington, Livingston, Hamilton, Madison, and other leading fathers, teaching that *the union was a league or federation of states*, and the editors of the later edition unwarrantably changing his doctrines.

CONGRESS.

In the edition of 1844 is the following: —

"CONGRESS. *n.* 4. The assembly of *senators and representatives of the several states* of North America, according to the present constitution or *political compact*, by which they are *united in a federal republic;* the legislature of the United States, consisting of two houses, a senate and house of representatives. . . ."

In the edition of 1864 is the following: —

"CONGRESS. *n.* . . . The assembly of *senators and representatives of the people of a nation*, especially of a republic, for the purpose of enacting laws, and considering matters of *national interest and constituting the chief legislative body of a nation.*"

I use the italics in all the above extracts to increase the force of the contrast. But comment will be dispensed with, because it could add nothing to the exposition. Look on this picture, and on this! The true one is a federal *congress* [from *congredi*, to come together] *of states*, legislating for their subjects; and the base counterfeit and caricature presents a *national* legislature as sovereign over a *nation* of people.

The Sum of Noah Webster's Views. — Here, then, are Noah Webster's teachings, which he fondly thought he had embalmed in the *magnum opus* of his life, as a sacred historical testimony and bequest to his countrymen: —

1. American political sovereignty, which is unlimited authority over everything in the state or nation, resides always in the people.

2. They politically exist and politically act only as republics or commonwealths, called states. These are equals and sovereigns, and are subject to no political authority whatever.

3. They, as such, confederated, and thus formed a "union of states," called "the united states;" but made no change in themselves, either in being or authority.

4. They, as such, constituted governments, each its own and all their general one.

5. To these, their creations, they "delegated," — that is to say, they entrusted, — not their *sovereignty* or *right to govern all persons and things* in their territory, but "*powers*" of government, thus governing themselves and remaining supreme; and the senators and representatives, chosen by each state, are *that state's delegation*, to represent her in *the congress of states*.

In fine, Noah Webster always asserted the unquestionable truth that our system is *a confederacy* of states, — "*states united*" [*les états unis*], to use his own phrase, — and that their government was *their mere agency, or the means by which they governed themselves*.

The Untruths ascribed to him. — In this matter of FACT and TESTIMONY, he is made to teach as truth the untruth, that our general polity is a nation or state, with counties or provinces as subdivisions, such as existed under Britain; that congress is "the chief legislative body of the *nation*, to enact laws and consider matters of *national* interest;" that the constitution is "the supreme law of the land," for the government to enforce over states and people; and that, in short, the government, *i. e.* congress, has "absolute supremacy" over allegiant states.

All the recent declarations and acts of the dominant party of the country, and of the government as administered by that party, entirely conform to these forged teachings.

Pro Tanto, the Book is not Noah Webster's. — Noah Webster's dictionary means Noah Webster's definitions; and he and his name are responsible only for the products of his own mind. "*The chief value of a dictionary consists in its definitions,*" says Noah Webster's son-in-law, Chauncey A. Goodrich, in the edition of 1847, which he "revised and enlarged;" and yet, after many editions had been issued, with the definitions in question unchanged, the principles involved in them were attacked; and while a hot war raged about them, the assailants, filled with passion and rancor, were allowed to change such definitions to suit their contention and justify their wrongs. No doubt the revision of political and constitutional terms was entrusted to some eminent lawyer, the correctness of whose work was taken for granted: but a great and gross wrong has been done, and it remains to be seen what Noah Webster's descendants will do.

They would never allow one who had contracted, and then quarrelled with them, *to define anew the words of the contract, so as to alter its whole meaning,* or one who had robbed them, or murdered one of their family, *to change, after the fact, the crime's description, or the meanings of its words!* Ah! if the descendants of that great man inherit any of his sturdy nature, clear mind, pure principles, bright honor, and proud dignity, they will, as he undoubtedly would, repudiate the wrongful changes, and publish, as soon as may be, a genuine edition.

If the enormity of this wrong were understood, the outcry would be universal. Six thousand years of history can show no parallel. The American people, at a great (and to the family of Webster a most precious) price, bought the results of that great man's labors, — his wares, so to speak, — and they paid him with princely patronage, the highest of mortal honor, and the most profound veneration for his memory.

But he conveyed, and could convey, as to these subjects, nothing but *ascertainments.* The language and its meanings already belonged to the people; and they wanted *the latter fixed precisely, as to contemporary signification, so that their institutional, political, and legal words could be ever used, like coins and weights and metes, as tests or measures of right and power and duty,* by themselves and their ruling agents. This was Webster's noble task, and he performed it royally.

Contemporanea Expositio. — The reader must keep it in mind that the inquiry is ever as to the intent of the makers or constitutors of the federal system, just as it would be if the subject were any other constitution or instrument expressing will. What did the words used, then, mean? This is common sense, and these meanings are the people's rights. "*Contemporanea expositio est optima et fortissima in lege*" is a universally accepted maxim. Daniel Webster said, in 1833: "The

constitution ought to be considered, when it uses well-known language, as using it in its well-known sense;" and Chief Justice Marshall said, in the Burr case: "So far as the meaning of any terms is completely ascertained, those by whom they are employed must be considered as employing them in their ascertained meaning, unless the contrary is proved by the context." Similar passages could be given from Vattel, Pothier, Lieber, and, in short, all other publicists.

Now these precious materials, of which our political defences, both general and local, are built, these walls of adamant, as we fondly supposed them to be, surrounding the treasuries and citadels of our "blessings of liberty" [federal preamble], are perverted, interpreted away, changed, or nullified, by the trusted exponent and defender, or his representatives.

The people — the majestic governing people of this country — placed the highest value on Webster's Dictionary, as a treasury of truth and principles, which were to be kept sacred for use, to measure and weigh their moral, legal, political, and treaty obligations; and they reposed in Webster and his fidelity a knightly, nay, a royal faith. The conduct reviewed — like that of those chosen servants of the people, who are oath-bound to support and defend, but who violate, the constitution — may be compared to that of the trusted knight, who, while his king was in deadly conflict, got behind his shield, and, with his own weapons, wounded him to death!

CHAPTER XIII.

CONSERVATIVE ERRORS.

IN concluding this part of my work, I will try to expose the errors of several public teachers, whose devotion to liberty and the sacred defences thereof cannot be called in question. Many of these eminent so-called conservatives and strict-constructionists do, with great show of research, thought, and logic, combat the errors of "the Massachusetts school," while they themselves promulgate fallacies nearly as reprehensible.

If this class reform their views of our general polity, they must study it in the light of actual contemporaneous history, and the herein contained explanations of the fathers, repudiating the false gloss thrown on it, first by enemies to defeat it, and afterwards by the equally unfounded, because identical, dogmas of Dane, Story, and Webster, and their followers.

"A REPUBLICAN FORM OF GOVERNMENT."

Probably the most widespread, important, and cardinal error is in reference to the meaning of this seemingly plain phrase. I have seen it used in argument hundreds of times in this generation, but never in its true sense, *i. e.* the meaning it had in the minds of the fathers, which I shall now try to show.

This phrase can but mean a republic. "The people" were organized, did exist, and could only act as bodies, called "Massachusetts," "Pennsylvania," "Virginia," "Georgia," etc. Each was a republic, a commonwealth, a state, *i. e.* a "moral person," possessed of a mind and will. This will in each — that is, the collective will of the people — was to be exercised in self-government; and, in providing that "the united states shall guaranty to every state in this union a republican form of government," the constitution seems to mean that the will and power of all the communities of people are to be exerted, when necessary, to protect each community of people in self-government, *i. e.* in the free exercise of her own will in all governmental matters.

The wills of the thirteen states were exerted through deputies in the convention of 1787, in devising the "federal constitution;" and the same wills were separately and successively exerted in ratifying, *i. e.* in ordaining and establishing that constitution, and endowing it with its only possible legitimate life and power.

The Sovereign Wills survived Federation. — The *wills* exercised on that grand occasion dwelt in pre-existent states. To associate the bodies-politic as "united states," and subject their people to "the government of the united states," these wills must have been sovereign wills; must have continued sovereign until the government was completed and actually set at work; and must, as sovereign wills, have survived the act of making the union of states. And hence, unless abdication or suicide can be shown, these sovereign wills existed until, in war, the states were brought under the yoke, *i. e.* subjugated.

"Form" and Soul both are meant. — But all the attempts at exposition I have seen, appear to take it for granted that the provision referred to, means merely the *form* of a republic, even though life and soul be wanting; or though the said form cower helpless under despotism, as several of the American states have heretofore done!

I will give here two examples of the error, to comment on. In speaking of the Louisiana case, the New York Sun said the following: "The oft-cited clause of the constitution, that the United States shall guaranty to every state in this union a republican form of government, does not apply to a case like that existing in Louisiana. The *form* of the government of that state is all right." [N. Y. Sun, 1874.]

A leading southern paper — highly conservative — held forth, on the same topic, as follows: "That there is no defect in the form of the constitution of Louisiana, is perfectly clear. Its *form* is contained in her constitution, which is the especial production of congress by its reconstruction laws. . . . How can congress then affirm that the *form* of this constitution of Louisiana is not republican?"

The error here is amazing, considering that it is that of a Louisiana journal. In saying "its form is the especial production of congress by its reconstruction laws," it virtually but unwittingly said — "Louisiana has no sign of a republican form of government."

These views which seem universal, even among conservatives, result, as I humbly think, from confused thought, or a want of thought. The word "*form*" in the clause, must mean *kind* or *sort*.

When, in the process of making the principles of liberty and human rights institutional, the people put the guaranty clause in the federal constitution [Art. IV., § 4], they acted in view of the general *forms*

(or kinds, or sorts, or species) of government, the world then presented, and publicists explained, viz.: the monarchical, the aristocratic, and the republican; and they said, "We want no monarchy or aristocracy, but we aim to establish or perpetuate a republic." Hence the idea in all the institutions then being established was, that the people were to govern themselves — all constitutions being their fundamental laws, establishing their forms of government, and all rulers being their substitutes, agents and servants. All sovereignty was held to be *ever* in the people, and *never* in the rulers; and the above article means as follows: *The associated states shall guaranty to every state in the association, that she shall have and enjoy the being and rights of a republic,* — that is to say: New York, Massachusetts, Ohio, Virginia, Illinois, Georgia, Oregon, Texas, and others, collectively, are bound in sacred faith and international honor, by their treaty, compact, or constitution (whichever it may be called), to secure Louisiana in being and remaining a republic. They must use their influence, their political authority, and finally, if needs be, their material strength, to preserve in her the unqualified right of self-government. It does not mean that she shall have "a republican form" without substance — the appearance or pretence of freedom without the reality. It does not mean that she shall have a constitution, a legislature, an executive, a judiciary, and popular voting (some European *monarchies* have all of these), but that she shall be a republic, and govern herself — separately in her own affairs, and jointly with her sisters in federal. It does not mean that she shall have all her rights reserved to her IN the federal constitution (as the Storys, Curtises, and even many leading democrats, say), but that she shall have and enjoy all original rights, and all original power. Rights and powers reserved must, of course, be *out of* the instrument which contains the rights and powers delegated, as a moment's reflection on Amendments IX. and X. will show.

All this is consistent with the legitimate authority in the federal constitution, which is plainly written, vicarious, and confined. It is authority given to men to act, not for themselves, but for others, who of course are above them. These superiors are the people, however organized and acting. The claim of absolute supremacy *over* states, instead of delegative authority from and *under* them, is the assertion of *might*, trying to become *right* by force and fraud.

Self-Preservation the Duty of a State. — The states in this union associated for self-preservation, and they contemplated no change in themselves, or diminution of authority. To "provide for" "defence" and "welfare," they, the said "moral persons," exercised the investigative faculties, reasoning powers, judgment, and will, that a natural

person would do, for the same purposes. It must be kept in mind that the Almighty, in making men moral agents, *i. e.* giving them the right of self-government, and ruling them into society, requires that the above-mentioned powers shall be exercised now and ever, for that self-preservation, which is the first law of nature, equally to states, persons, and brutes. States as well as men are the products of God's wisdom. Now, reader, think of it, and tell me if you do not *ascertain* facts, *reason* on them, *judge*, and determine your *will*, as to your "defence" and "welfare?" Must not every moral being do so? If the last time you did so, you had bound yourself to do so no more, would you not be a slave? If a state has so bound herself, is she still free? The great issue now before God and the world, is freedom or slavery of states! — states made of men, and their belongings and rights!

Ah! such mental *powers* in a God-endowed commonwealth — the "moral person" Vattel speaks of — are coupled with the *duty* of constant exercise. A state is charged with the "defence" and "welfare" of her people. Her *making* this union, is a confession of her duty to *make another* if this, her second effort, fail, as did her first. And nothing but weakness can excuse her for not destroying the despotism that prevents the free exercise of her *will and duty* in this matter. Weakness alone makes submission a duty. This and the women and children, have often been the sole safety of the oppressors, in some of the states!

Voting was a mere Simulacrum of Liberty, in some of our states. In them only the form of institutional freedom was left. "Soul was wanting there." The *will* of the corporate despot at Washington, instead of the *will* of the people, was law. But was it not a representative government? Did not the people elect all? Is not that self-government? Vain delusion! In England the people elect. Louis Napoleon had universal suffrage in France. Our people were similarly privileged. We had the "form," but no substance, no life of the republic! "The government" claimed and enforced "absolute supremacy" over states and people.

The Guaranty is Really One of Sovereignty. — It is evident, then, that the state, as a political body, has the right to the guaranty; and that her soul, her will, and her right to govern, must be included. The soul is essential to such "moral person" [Vattel], and reason, judgment, and will are essential to the soul. Hence, to guaranty republican government to a state, is to guaranty the continued existence of the community of people referred to; the continued existence of the soul of that commonwealth; the continued existence of the will thereof; the continued existence of the right of that will to govern in

all cases; and the continued existence of its entire control of the instruments called votes, by and through which the said will is expressed.

These votes spring solely from the will of the commonwealth. Through them, under state laws, and at state polls, all officers, state and federal, get their sole validity and authority to act. All the power of the federal government of any kind, or on any subject, must come through these votes. Says Montesquieu: "In a democracy, there can be no exercise of sovereignty but by the suffrages of the people, which are their will. The sovereign's will is the sovereign himself. The laws establishing suffrage are therefore fundamental to this government." [*Esprit des Lois*, p. 12.]

Some may fancy they find "exploded theories" in what I here write; and may think I am "behind the times," and "unpractical." But I am only restating the statements and faith of the fathers; and giving the precise acts of the people, in building up their permanent institutions; and I am very careful to adduce facts, and to avoid the great offence of denying, burying or crushing "God's truth;" for it will live through time, "rise again," and finally "sear the eyeballs" of those who, because it is stricken down, and they think it troublesome and profitless to raise and defend it, say: "Let us accept the situation," and "go ahead from attained results!"

THE FOURTEENTH PARTY TO THE COMPACT

was, according to Robert Y. Hayne and Judge J. S. Black, the government, which could not have had any existence, till long after the eleven states had ratified, established, and finished said compact.

Hayne, in his debate with Webster, said: "Here then is a case of a compact between sovereigns; and the question arises — what is the remedy for a clear violation of its express terms, by one of the parties?" — thus treating the government, both as a party, and a sovereign. [IV. Ell. Deb. 509, 516.]

Judge Black is an abler man, and a clearer thinker. In the Milligan case, he spoke of the "vesting of the judicial power, which the united states could legally exercise;" and said — "that was the compact made with the general government at the time it was created."

Other eminent men make the same mistake, so that the confusion of ideas on this subject is general. It is only necessary to say that the compact existed and was complete, through those ratifications, declared in itself to be sufficient for the establishment of it, many months before the general government existed. After the collective

states, in the congress of themselves, had recognized the finished compact, and advised the states to act under it, by electing their subjects as its functionaries; after the several states had elected their quotas, according to the express terms; and after these electees had convened and organized under the said pact; then and not till then did or could the general government exist. It is then absurd to call the government a party.

The real fourteenth party — if any — is, as has been shown heretofore, the association called "the united states," to which all the powers of the constitution were delegated, as Amendment X. proves. [See *supra*, 193.]

Article I. of the original form of the constitution, as unanimously approved by the convention of 1787, corroborates this view fully: "The style of the government shall be 'the united states of America.'" The united republics themselves — and not their agency — were to be "the government." The people, as organized, must govern themselves. Otherwise they are not republican! [See V. Ell. Deb. 377.]

NULLIFICATION.

The first remarkable appearance of this error — for such I assume it to be — is in the Kentucky resolutions of 1799, said to have been written, or, at least inspired, by Mr. Jefferson. [See IV. Ell. Deb. 545.] The Virginia resolutions of 1798 are also charged — but denied — to contain the doctrine.

The next most conspicuous assertion of the claim, was that of South Carolina, and her leading statesmen, in 1830–1833.

As has been shown, the state has a sovereign mind and will, of which the constitution and the resultant government are alike the offspring; while, in establishing such constitution, and working the government through agents, the said state is simply exercising its right of government, *i. e.* sovereignty, in a purely functional way. To say it is the sovereign law-making power, is equal to saying, it is the sovereign law-repealing power. The states elect all government, and delegate all governmental authority.

But, a state or its convention has no right to withdraw some, and leave the rest of the powers; or obstruct the execution of a part; or annul a law, while adhering to the union; for the constitution, being a compact, is not to be partly suspended, and partly executed, by one of the parties. If, however, a state attempt it, only a *casus belli* is made, for coercing the will of a state is inconsistent with the voluntariness of the states' union, and their action in it; and, of course, justifies the return of blows. The fathers characterized such coercion

correctly, as war. Hence, the position of the Jackson administration is as bad as that of the nullifiers; and its proclamation was both petty and fogging sophistry — a state paper alike unworthy of the subject and the author. The proclamation of force was not actually against an unlawful combination, so much as against the sovereign will of an equal commonwealth; and it was treasonable in its nature!

A Cardinal Error and a Plain Distinction. — South Carolina made a great mistake in attempting to nullify the federal tariff laws; and it raised a fatal prejudice against secession, or the ultimate peaceful right of self-preservation, which of course includes discretion as to occasion, time, and manner. South Carolina should have protested, and, if unheeded, withdrawn. Her false position gave Webster his great vantage-ground, of which he availed himself most adroitly — yoking "nullification" and "secession" together, and driving both to ruin.

Said he: "In the constitution it is the people who speak, and not the states; . . . it does not exact from states any plighted public faith to maintain it; . . . it makes its own preservation depend on individual duty and obligation." He then proceeds to say that state legislators, judges, and executive officers, like federal functionaries, are bound by oath to support the constitution [Art. VI., § 3] and hence are *compelled* to elect senators, and provide for the election of representatives and president. The functions of states in the union, he argues, are not voluntary; they have no discretion; "the people" have bound them inseparably to the constitution, and under the controlling power of the federal government. Their sovereign will, and right of self-preservation, are alienated and gone forever. Hence (having made his premises, his conclusion is easy), both "nullification" and "secession" are unconstitutional and inadmissible. But Mr. Webster finds it convenient to ignore the most important fact: that members of a state convention are not mentioned, and are not under the obligation of taking such oath (*expressio unius est exclusio alterius*). Why are not conventionists required to take the oath? Because, immediately representing the sovereignty — *they* MADE *said constitution* (including this clause) and are of necessity above it. The will that creates, remains above its creation. The will that delegates powers, owns them absolutely; and whosoever else holds them, does it as agent or trustee. *States did not intend to subordinate themselves.* They did not place themselves under the jurisdiction of the federal government, as every line of the record shows! Not only so, but they provided against even judicial federal control; and, moreover, they spurned the idea of federal coercion of states, from their "convention of states," while, at the same time, they gave to the govern-

mental agency, or commission for federal affairs, *just such relations to, and control over*, their citizens, as their state governments had — and nobody claims that these have sovereignty over the states!

When, then, the organized people — the state — call a convention, it is the sovereignty that acts: it is uncontrollable — above all constitutions, and in no degree bound by them, for it is the power that alike *constitutes* and *dissolves*, makes and unmakes them. Massachusetts conclusively proves this in her constitution, as heretofore quoted: "*The people of this Commonwealth* . . . have an incontestable, unalienable and INDEFEASIBLE RIGHT to institute government, and to . . . TOTALLY CHANGE the same when their safety and happiness require it." This constitution, which is full of unqualified state sovereignty, is said to have been written by John Adams, the ancestor of the present conspicuous persons of that name in Massachusetts.

The Plain Distinction. — Now we can see, quite plainly, the distinction between nullification and secession.

Nullification remains in the union, enjoying its benefits, but only obeying such part of its laws as it pleases; and sworn functionaries presumably violate their oaths.

Secession withdraws from the union of states, revoking all powers "delegated" thereto; and state officials are relieved of all federal obligations by the supreme power that imposed them.

I think now that it is conclusively proved, by the self-characterization, and the action of the states in the union, that each original one, being thoroughly organized and sovereign, did, by virtue of its sovereignty, through its convention, federate, "*delegating*" a part of its governing power to the united states, *who, by their agency*, constituted in the act of federation, *govern* for their common defence and general welfare. And each of these great commonwealths passed into the union, exactly as she pre-existed, in her full integrity, with all her faculties, possessed of plenary authority, and acting functionally, in all matters of government, with uncontrolled will. And ever since *its sovereignty came by revolution*, as well before as since the present federal constitution was formed, it has, at discretion, "delegated" a supplement of governing authority to an agency for home affairs — this also being done by its convention.

Unquestionably, then, the nullifying or suspending of the laws of the federation by a party, while staying in, and enjoying the benefit of the association, is inconsistent with *the "compact and plighted faith,"* upon which Mr. Webster, as well as every other candid publicist, bases the "ARTICLES OF UNION" "BETWEEN THE STATES" (as the federal convention unanimously characterized them), and the laws passed in pursuance thereof.

"THE LOST PRINCIPLE."

If the states ratified the constitution, each for herself, they must be "*the parties to the compact*" [Hamilton, 85 Fed.], and the only way to show that sections, or groups of states, were also parties, is to show that they exercised their wills, as such, in becoming so. Among the misleading and confusing expositions to be noticed, are two, the first by "Barbarossa" (Robert E. Scott, of Virginia), in 1860, under the above title; and the other by Webster and Curtis, to rid the former of these two of an inconsistency in his speech of 1833.

"Barbarossa's" theory is, that in the convention of 1787, a warm controversy arose between the larger and the smaller, and between the northern and southern states, which was settled by a compact, establishing sectional *equilibrium*. The theory will be found in the appendix hereof, in the author's own words. [See Appendix F.] Among the motives and understandings, this may have had place; but it was not expressed and consecrated among those institutional balances and checks that the sworn statesman or the expositor must take cognizance of, and to which he must confine himself. "Barbarossa" marvels at Madison not mentioning this compact of *equilibrium*, in the constitutional convention of Virginia, in 1829, of which he (Madison) was a member. I think the duty of stating, then and there, so important a part of our system — if part it had been considered — would not have been shirked. But, I opine, it was no part. The constitution was written, complete and palpable, and contained — and it contains now — no hint of the momentous compact, which "Barbarossa" contends belongs to it, and "makes the federal system even more complex than it has been generally supposed to be."

In conclusion of this subject, I submit that the idea of compact is inadmissible, where it is not evidenced by the words and figures of the instrument, is not promulgated as a part of the supreme law, is never mentioned in history, or contemporary annals, but lies occult and unknown for forty years in a secret journal, which might never have seen the light. I should incline to a more positive opinion, but for the fact that Professor Bledsoe, who was always thorough in research, and alike comprehensive and profound in reflection, thought the matter involved a practical and binding compact, of which he promised to treat, in a history of the late war, which he intended to write. [See Southern Review, Jan. 1876.]

Webster and Curtis have the Same Idea. — As Daniel Webster had inveighed against Calhoun's use of the phrase "constitutional compact," and had been himself a habitual user of the phrase, he had

to explain, as did Mr. Curtis, the latter as follows: "He was speaking of a particular clause in the constitution, . . . as *founded on* a compact between different classes of states." Of course, the mysterious "compact" is far down, and to judge of it, we must do as we do with mummies: in the first place, bring them from under the pyramid, and, secondly, unfold them a good deal. But I must pass on, referring to the above remarks on "Barbarossa's" theory, and to page 211, *supra*. Contemporaneous exposition is valuable, but it must be based on the actual provisions of the constitution.

"THE CONSENT OF THE GOVERNED."

In the Declaration of Independence, Jefferson wrote that to secure the rights of "life, liberty, and the pursuit of happiness," governments are instituted, "deriving their just powers from *the consent* of the governed." In a republic, of course, *will* — the collective will — is the proper word, consent being included; for Englishmen, Germans, and Russians give *consent* to government, just as much as Americans do. A clement and gracious king, in doing *his own will*, always seeks the people's preference or consent; and, in England, the wish of the people is a very influential guide to government. But this does not answer. *Will* is wanted.

Our public men and press seem to think that, because the southern states submit, they consent; so that the Declaration is satisfied, and the soul of Jefferson content.

If they be republics, their *will* — the *will* of the people — the *will* of the commonwealths must govern.

"THE WILL OF THE MAJORITY RULES."

Is not this phrase of Mr. Jefferson both fallacious and pernicious? I can find no evidence that either he, or any subsequent politician, has deliberated on the subject; and it seems to be one of the numerous honest but loose and misleading phrases, that so infest our politics and confuse our political ideas.

Will is a unit in the state, and *it* governs, determining itself by its instruments — votes. The *majority* of voters is never brought together and organized, so as to make a body for a mind and will to dwell and act in, for the purpose and duty of ruling. This simple consideration shows the absurdity of the phrase.

Instead of electees being servants of the electing party, they are exclusively the servants and agents of the commonwealth, to carry out *its will*. An official swears to support the constitution, *i. e.* the

will of the commonwealth, instead of the party platform — "the will of the majority."

"To the victors belong the spoils" is alike the plain English and the practical result of the dogma. The party is to govern, with their platform as their rule of action. It is this which unifies our tripartite government, and destroys our system of absolutely independent checks and balances. If a bad and weak president or governor is put in with corrupt men, he becomes the head of a conspiracy against liberty. The three distinct institutions become, and act as, a unit, and corruption begins. The money and power they handle not only depraves them more, but gives them the means of future success.

Under this doctrine, the simple, old-time President seems to have become like a conqueror, dividing among his generals a subjugated empire; or, to use a figure that will suit some people better, like a successful hunter, cutting up and throwing to his tired and hungry hounds the victim of the chase.

"THE CHARTER OF OUR LIBERTIES."

King John, in "the great charter," designated the rights his subjects should enjoy; and he and his successors pledged kingly faith not to take them back.

King People, in constitutions, constitute governing agencies, and designate the powers they shall use for said king. If charters at all, they are so only to the governments chartered, or, to use James Wilson's word, incorporated. In his inaugural address, Washington spoke to congress of "the great constitutional charter, under which you are assembled." The fathers all held this view, and ridiculed the idea of the federal constitution being the source, or defence, of any private blessings.

The fathers deemed the bill of rights unnecessary, and out of place, in the federal constitution; but it was finally inserted as a protestative statement and treaty guaranty of the chief institutes of freedom, — which were above all constitutions, — to allay the suspicions and fears of the people. [See first ten Amendments.]

But, in these later, if not better, days, the constitution has become *a charter* TO the people. "The perpetual charter of freedom for a self-governing nation" is what the old North American Review called it. Andrew Johnson, and I think James Buchanan, used similar phrases.

Last and greatest, however, Jeremiah S. Black said, in the Milligan case: "I prove my title to my estate" by a solemn deed; so with "*my right* to a trial by jury. There is *the charter by which we claim to hold it*, . . . the constitution of the united states."

Story, Webster, and the federal supreme court are responsible for such delusions. But that is no defence to us. If these prove to be errors, we should discard them. My right of trial by jury, and other "blessings of liberty," have a previous, higher, and more sacred sanction than the federal pact. The solid and indestructible commonwealth is their citadel; and the federal pact, with the above guaranty, and the still more important one, of the integrity and absolute authority of the commonwealth, are the outer and impregnable wall!

SOCIAL COMPACT — CONSTITUTION — BILL OF RIGHTS.

It may be well here, in order to enable our people to unmix their ideas and think more clearly on these subjects, to discriminate as follows: Firstly, the social compact is the agreement or understanding among the members to be, and obey, the society; in other words, it is the *organic law* of the society. [See Part IV., Chap. II.] Secondly, the constitution is the fundamental law, establishing, directing, and controlling the government. It necessarily involves a *compact* among the parties to it, — a *law*, "the supreme law," laid on their subjects, — and a *constitution* of an agency to execute the said law. It does not include the social compact, but implies it, or recognizes it as a pre-existent entity. Thirdly, bills of rights are declarations of society's or the people's rights, — sacred institutes of freedom, never to be invaded by persons or governments. Hence, a *constitution of government may exist*, without including or referring to either the social compact or a bill of rights, though one or the other, and sometimes both of these, are either expressed or implied in some of our constitutions.

In our republican form, however, as society governs itself, establishing society is, *ipso facto*, establishing government, — what is commonly called the constitution of government being really and necessarily the constitution of a governmental agency. It is of the nature of a republic to govern itself. Its institution of government is artificial, — the making of a machine or instrumentality. The society is God's, the agency man's, design.

THE GROWTH AND DEVELOPMENT THEORY.

Perhaps this is the most insidious, delusive, and pernicious of all the theories that relate to our institutional freedom. The idea involved is, or seems to be, that republican government can and does grow commensurately with the area, population, condition, greatness, or what not, of the nation, and that it is the duty of the governing agents to recognize, from time to time, and effectuate the changes and increments.

One would think that the vital provisions for self-government would suit San Marino, in all her stages, even if she grew to be a China; and that, if change of institutions and institutes were at different times needed, she, the sovereign, and not her agents and subjects, could alone rightfully make them.

The establishers of our federal compact, and other constitutions, contemplated the need of change, and provided for their own doing of it, in Article V. If amendments and alterations can be made by authority not their own, their self-government is over, their freedom is gone!

A moment's reflection on the sense of the primitive word "*stare*" (to stand) will aid us. It is the soul of numerous derivatives, such as stay, stop, steadfast, stable, *status*, stationary, institute, establish, constitution, etc.; and it is obvious that the vital words, "ordain and *estab*lish this con*stitu*tion," necessarily carry the idea that its provisions are to *stand* till changed by the ordaining power, which is the people, the societies, the commonwealths, the republics, the states, especially as the amending and repealing are precisely commensurate with the ordaining or enacting power.

But it is unutterably absurd that the servants and subjects, acting under these standing orders of the people, the constitution, are to watch for some growth and development in some or all of such orders, determine when the changes are to be utilized, and finally formulate and enforce them, thus reintroducing that very discretion of rulers which constitutions were made to prevent, and which, when permitted, has never failed to overthrow free government. [See Burke's view, page 7, *supra*.]

The people are the be-all and end-all of government and governing action. They know and feel their evils and defects, as well as growth and development, and they can, whenever they wish, most wisely suit their institutional changes thereto. They see the questions extant, as to railroads, telegraphs, presidential elections, Mormons, etc., and they will duly deliberate and act. And their servants, whose duty it is, instead of making the changes themselves, to follow and aid the people, can only destroy confidence in their morality and wisdom, by showing their willingness to make changes in the fundamental decrees of their masters, the people, especially as in so doing they necessarily commit perjury and treason!

SECESSION.

In addition to the remarks in Part I., Chapter IV., I beg leave to note one or two errors on this subject. Secession is a natural and instinctive act of a sentient being, which, as to right, comes within

the general one of self-preservation. It would be no more absurd for a man to promise not to escape, or even flinch, from danger, than for the "moral person," the commonwealth, to bind herself not to use her mind in settling questions of "defence" and "welfare," — not to judge between right and wrong, safety and danger, freedom and slavery; not to separate from what she voluntarily joined; not to repeal what she enacted or ordained; not to withdraw powers she delegated; and not to dismiss the agents she chose, even if they became enemies, and warred, with her own men and means, to subjugate and destroy her!

But now we have no party recognizing this vital truth, and no aspirant admitting its correctness. The Southern states have spurned it. The so-called democratic party condemns it — as they might digestion, sweating, the action of the nerves, or escaping from a house afire. And finally the Rosecrans "crowner's 'quest" in 1868, verdicted, "dead by lawful force!" and put copper seals on its eyes!

Why Ignore Nature and Righteousness? — God commands every self-formed, self-governing, self-protecting society — every society or commonwealth, possessing a mind and will of her own, to fight, if necessary, to save her children from injustice and wrong, and, *a fortiori*, to secede for the purpose, and *avoid* war. Neighborly kindness, the promotion of mutual interest, and the doing of justice among states, are positive moral forces of cohesion of the strongest character; while the admitted right of secession, or, in other words, of sundering unfriendly or hurtful relations, always potently works towards justice and peace and union! The spirit of Abraham's "Let there be no strife between us," and that of Grant's "Let us have peace," differ "by the whole heavens." To us, especially, "wisdom's ways are ways of pleasantness, and all her paths are peace!" In short, if amity be cultivated, mutual interest promoted, and justice done, the union will never be saved, in any active sense, but will last forever! Men and states naturally cleave to friendship and justice!

The Late Secessions Unjustifiable. — But let us assume that the states had the right to secede; and then view the secessions of 1861 on the higher plane of morality, and international conduct. If we look at the defences and remedies within the union; the vast resources of diplomacy; the influences always working in favor of justice and peace; and, above all, the healing in the wings of Time, — those acts of the seceding states should be condemned, while the provocations that caused them should be reprobated with even greater severity.

Leaders of the people are too prone to assume that right, justice, the spirit of compacts and plighted faith, will be persistently violated;

and that there is no chance for just settlement in peace and by reason; and they strive to augment every impulse of fear or anger in the masses, and ride to power on the wave. "The sober second thought," as Fisher Ames terms it, is seldom or never reached before decisive and perhaps fatal action!

All the counsels and hopes of the fathers were disregarded. Patience, forbearance, deliberation, and waiting for wise diplomacy and for the healing power of Time, should have been the policy of leaders. But only two conspicuous men in the seceding states timely gave such advice — Davis and Stephens; and the very people supposed to be hot with passion, deaf to wisdom, and incapable of hastening slowly, elected them unanimously as President and Vice President of the confederate states! and unanimously readopted the constitution of our fathers! [See Appendix B.]

Among the Lessons this "Part" conveys, we should especially note, that we require leaders, who are older and wiser; less selfish, less partisan, less impulsive, and more thoughtful; firmer in principle, and more conservative in action; and finally — always endeavoring to restrain, or guide aright, the sudden impulses of the people, and trying to bring reflection — "THE SOBER SECOND THOUGHT."

That we should as a duty eliminate from the *exegesis* of our written polity the errors exposed, which have heretofore prevailed.

That we should reprobate the teaching, that a sworn functionary of the constitution may obey his conscience, against its provisions — as substantially taught by the *quondam* North American Review, and William H. Seward.

That we should stamp with infamy the idea that public agents, sworn to use the powers in, and *not to use those out of*, the constitution, may, at their discretion, use the latter — as Henry Ward Beecher and Thaddeus Stevens have taught.

That our leading minds should try to get (and to teach) a definite conception and clear ideas of our general polity, so that all shall realize that it is a superstructure, built of facts, which are as palpable as bricks and stones; that in truth it is, as Chief Justice Law said, in the Connecticut ratifying convention, "like a vast and magnificent bridge, built on thirteen [now thirty-eight] strong and stately pillars; and that the occupants of said 'fabric' (*i. e.* the federal agency) would be foolish and wicked to 'knock away the pillars that support it.'" [II. Ell. Deb. 201.]

That we shall always be victimized by "fallacious exposition" on this subject till we see, and confess, and keep it in mind, that "*the people*" *are the states*, and that the states are the people, and are the only political form in which the people ever existed or acted —

the only form, indeed, in which they ever had capacity to act in government.

That instead of the union being preserved by sophistical chains, backed by force, the original motives of union, justice and mutual interest, should be promoted and relied on; and that our statesmanship should in future aim to settle all questions on such righteous basis, by peaceful methods.

That, above all, the fixedness and sacredness of the written defences of our "blessings of liberty" should be secure against perversions and unauthorized changes; and that outlawry, infamy, and universal anathema should be the fate of every agent of the people who betrays, in any respect, the sacred trust he is sworn to protect and defend in all its parts — THE CONSTITUTION!

PART IV.

SOVEREIGNTY IN THE UNITED STATES.

"What constitutes a state?
Not high-raised battlements, or labored mound,
Thick wall, or moated gate:
Not cities proud, with spires and turrets crowned;
No! men, high-minded men!
Men who their duties know,
But know their rights, and knowing, dare maintain,
Prevent the long-aimed blow,
And crush the tyrant, while they rend the chain;
These constitute a state:
And sovereign law, that state's collected will,
Sits empress, crowning good — repressing ill."

PART IV.

SOVEREIGNTY IN THE UNITED STATES.

CHAPTER I.

THE GENESIS OF A STATE.

IN the republican form of government, society governs itself; that is to say, the collective people govern the individual people — the former being sovereign, the latter subject. Accordingly all the right of government, in our country, is in society, as formed; and hence the "general government" can have no possible authority, except what is derived from the states — the state, at the institution of the said government, being the only form of society, and being then, as all admit, sovereign. As to sovereignty, or "absolute supremacy," being in "the government," Mr. Webster said, in his speech of 1833: "No such thing as sovereignty of government is known in North America. . . . With us the people alone are sovereign." So said James Wilson, in the Pennsylvania ratifying convention: "The sovereignty is in the people before they make a constitution, and remains in them after it is made." [See *supra*, p. 101.]

No respectable denial of these statements has ever been made, and no one will dare to deny them.

The great expounder then admits, as Wilson states, that the constitutors, in constituting government, put no sovereignty whatever in it, but left this in the people.

And as *the people only exist and have capacity to act* in government, *as states*, the position of both of them necessarily is, that *the states are sovereign.*

This should seem to end controversy; but the people, who are the government, must have an understanding, as well as an impression, of the truth, so that when the hydra heads of perversion shall hereafter be cut off, public hate will cauterize the bleeding necks, and ever prevent renewal.

Therefore, elaborate and instructive presentation is necessary, and herein to be pursued. And in the process it will be shown that genuine American history and exegesis plainly prove: 1. That the states are sovereign in the union; and 2. That "the government" is a mere agency.

The whole Subject is one of Facts. — "What political system have we?" is, as I have before said — a question of fact, and must be argued as such. The states are facts; the constitution they made is a fact; and so with the government. An ingot of gold, a bushel of salt, or a quintal of codfish, cannot be more precisely weighed and measured than they. The utterances of statesmen, or even courts, cannot make, unmake, or in anywise change such facts. When once existent, they are beyond even the power of Jehovah! If, then, a thousand officials, whether political or judicial, were to decide our general system to be *a union of individual men*, and not a union of states; or that *the sovereignty is in the government*, and not in the commonwealths of people, they would speak in vain; and the question would still remain as one of fact, to be settled by proof. The utterances above italicized are, and must forever remain, true or untrue. Force cannot settle such a question. War never did, or could, make right wrong, truth falsehood, or a fact not a fact. To settle the question, then, we must adduce the evidence that proves the state, or sovereignty, just as we would prove the ingredients of a crime. The facts must fill the technical description. Truth on this subject in 1788 was true in 1860. The *fœdus* was a fact at both epochs. The war did not change it, no matter what politicians say, or deluded people think!

The States Themselves are the Government. — We have heretofore seen that the federal constitution, in Articles I. and VII., names the thirteen original states as the parties, and treats them as such, while all the rest of the articles are corroborative, and give no sign or hint of change, as to the geography, organization, character, or authority of the said states. I have already shown that the instrument repeatedly characterizes the system as a union of states; that the convention unanimously declared that "*the government*" was to be "*the united states*" themselves, and never changed their view [V. Ell. Deb. 377]; that the delegations of power for federal government were (not to the government, or nation, but) to "the united states" [Amendment X.]; that the word "state," as to Massachusetts and New York, meant what it did as to France or Spain — "a body-politic, or society of men, united together for the purpose of promoting their mutual safety and advantage," etc. [Vattel; Fed. Const. Art. I., § 9; III., § 2; Amendment XI.]; and finally, that the *personnel*

of the federal agency must be the citizens and subjects of the said states — each state choosing her own part of them, to aid in the said agency.

The States are so many Republics. — Webster lays down the rule that, where well-known language is used in the constitution, it must be understood in its well-known sense. And, moreover, Webster concedes the very point under consideration, when he says, in the "Bank of Augusta *vs.* Earle" (13 Pet. 584), that the *jus gentium* governs all questions not provided for in the constitution, — that is to say, these associated nations or states have settled by agreement all the questions or subjects the constitution includes, but have left all others to be settled as they arise by or according to the law of nations. The federal supreme court, in the same case, took the same view. Massachusetts, then, on becoming independent, was as complete a nation as France, and possessed the same absoluteness of will as well as supremacy and exclusiveness of control over her territory and citizens. Though one was infantile and weak, and the other a first-class power, they were alike and equal in the eye of public law; they had the same organism and nature; the life or power of each was peculiar, exclusive, vital, and precious to her; and self-preservation was the first law of nature to both alike, just as it is to men and inferior animals.

Nay, more, Massachusetts in 1780 promulgated these very ideas in her constitution, as I have shown, and she has maintained them therein to the present day. [Appendix E, No. 2.]

Unquestionably, then, our general constitution of government is a league, or the result of a league, "between the states ratifying the same;" and the government provided for is necessarily an agency of the said states, and subordinate to them, for they were the sole and exclusive actors and sources of authority. Such was, as I have heretofore conclusively shown, the theory of the federalists at the making of the constitution.

The Case exemplified by Pennsylvania. — The growth or formation of an American commonwealth, and the principles of political philosophy involved, can well be exemplified and illustrated by the case of Pennsylvania. Through generations, she grew, and finally became complete in organism, independent, and absolutely self-governing, — a political and moral being, endowed with perceptive faculties, reason, judgment, and will, incapable of politically acting except as a body, the people who formed her reserving no shadow of political power, but being governed, in all respects, by the will of her as a body-politic. This authority was exclusive of all other, and, as Mr. Curtis admits, was the highest on earth, as to the people and territory

where it existed. There was, in Pennsylvania, no possible chance for any other authority to act, in forming the federal constitution, and commanding her people's obedience to it; and we shall see that this body, called Pennsylvania, absolutely and finally acted, in becoming a party to the said federal constitution, and giving the federal agency, which was provided for, directed, and restricted therein, its only authority over the people.

The Origin of Pennsylvania. — In 1681, Charles II., out of personal regard for William Penn, and gratitude for the services of Penn's father, — the admiral of that name, who in 1665 defeated the Dutch fleet under Herr von Opdam, — granted to the said William, his heirs and assigns, "all that tract or part of land in America," since called Pennsylvania, and did "make, create, and constitute them the true and absolute proprietaries of the country aforesaid, saving always unto us, our heirs and successors, the *sovereignty* of the said countries." Penn and his heirs governed, under the sovereignty of England, for nearly one hundred years.[1]

The first Step of making the Province a State. — In 1776, from the 18th to the 25th of June, a provincial conference was held in Carpenter's Hall, Philadelphia, composed of about one hundred of the leading men of the province, for the purpose of forming a government to supplant the British. This conference resolved unanimously, among other things, "That it is necessary that a provincial convention be called by this conference, for the express *purpose of forming a new government in this province on the authority of the people only.*" And "without one dissenting voice," they agreed "that every associator in the province shall be admitted to vote for members of the convention,"

[1] I will here note some of his views, which are instructive. He wrote to Robert Turner, January 5, 1681: "It is a clear and just thing, and my God that has given it me through many difficulties, will, I believe, bless and make it the seed of a nation. I shall have a tender care to the government, that it be well laid at first." In his statement prefatory to the "frame and laws" of his government are the following passages: "Any government is free to the people under it (whatever be the frame) where the laws rule, and the people are a party to those laws." "There is hardly one frame of government in the world so ill designed by its first founders that, in good hands, would not do well enough. . . . Governments, like clocks, go from the motion men give them: so by them they are ruined, too. . . . Let men be good, and the government cannot be bad. But if men be bad, let the government be never so good, they will endeavor to warp and spoil it to their turn. I know some say, let us have good laws, and no matter for the men that execute them; but let them consider that, though good laws do well, good men do better, for good laws may want good men, and be abolished or invaded by ill men, but good men will never lack good laws nor suffer ill ones. . . . A loose and depraved people love laws and an administration like themselves. That, therefore, which makes a good constitution must keep it, viz., men of wisdom and virtue, qualities that, because they descend not with worldly inheritances, must be carefully propagated by a virtuous education of youth, for which after-ages will owe more to the care and prudence of founders, and the successive magistracy, than to their private patrimonies."

provided he is twenty-one years old, has resided one year in the province, has paid taxes, etc. They agreed also that the voters and members of the convention "should change their allegiance," the oath prescribed for the members being as follows: "I, A. B., do declare that I do not hold myself bound to bear allegiance to George III., . . . and that I will steadily and firmly oppose the tyrannical proceedings of the King and Parliament, . . . and [consent ?] to establish and support *a government in the province on the authority of the people only.*" On Sunday, June 23d, they did their largest day's work, and at the conclusion thereof they adopted an address "*to the people of Pennsylvania,*" which commences as follows: "Friends and countrymen: In obedience to the power we derived from *you*, we have fixed upon a mode of electing a convention to form *a government of the province of Pennsylvania, under the authority of the people.* . . . We need not inform *you* of the importance of the trust *you* are about to commit to them; *your* liberty, safety, happiness, and everything that posterity will hold dear to them to the end of time will depend upon their deliberations." And on Monday, June 24th, they declared that George III., "in violation of the principles of the British constitution, and of the laws of justice and humanity, . . . hath lately purchased foreign troops to assist in enslaving us, and hath excited the savages of this country to carry on a war against us, as also the negroes to imbrue their hands in the blood of their masters, in a manner unpracticed by civilized nations, and hath lately insulted our calamities by declaring that he will show us no mercy until he reduces us;" and that "the obligations of allegiance (being reciprocal between a king and his subjects) are now dissolved on the side of the colonists by the despotism of the said king, insomuch that it now appears that *loyalty to him is treason to the good people* of this country." And they further declared as follows: "We, the deputies of *the people of Pennsylvania* assembled . . . to form a plan . . . for *suppressing all authority in this province, derived from the crown of Great Britain*, and for establishing *a government based upon the authority of the people only, now*, . . . with the approbation, consent, and authority of *our constituents*, unanimously declare *our willingness to concur* in a vote of the congress, declaring the united colonies free and independent states: Provided *the forming the government*, and the regulation of the internal policy of this colony, *be always reserved to the people of this colony.*"

Another manifesto of this provincial conference, "to the Associators of Pennsylvania," says their design is to "put an end to their own power in the province," "by calling a convention to form a government under *the authority of the people;*" and continues as follows:

"You are about to contend for permanent freedom, to be supported by a government which will be *derived from yourselves*, and which will have for its object, not the emolument of one man or class of men only, but the safety, liberty, and happiness of every individual in the community."

The State or Nation completed. — The convention provided for was duly elected, and it met and deliberated from the 15th of July to the 28th of September, 1776. The following is the commencement of the organic law established: "We, the representatives of *the freemen of Pennsylvania*, in general convention met, . . . do, by virtue of *the authority vested in us by our constituents*, ordain, declare, and establish the following declaration of rights and frame of government to be *the constitution of this commonwealth*, and to remain in force therein, forever unaltered, except in such articles as shall hereafter, on experience, be found to require improvement, and which shall, *by the same authority of the people*, fairly delegated, as this frame of government directs, be amended or improved, for the more effectual obtaining and securing the great end and design of all governments, herein-before mentioned."

Thus was Pennsylvania established as a state. The people all assented to the association, and, *as a society*, they assumed *sovereignty*, that of Great Britain being *ipso facto* displaced. They declared, in the above-mentioned organic law, by virtue of their sovereignty and as matters of original and unlimited right, as follows: "*We, the people of the commonwealth of Pennsylvania*, ordain and establish this constitution . . . ALL POWER IS INHERENT IN THE PEOPLE, and all free governments are founded on *their* authority, and instituted for *their* peace, safety, and happiness." "*The community* hath an indubitable, inalienable, and *indefeasible* right to reform, alter, or abolish governments, in such a manner as shall be, *by that community*, judged most conducive to the public weal." "All officers of the government are *their trustees and servants*, and at all times accountable to *them*." [See the Pa. Dec. of Rights.]

Now, where is the national idea, which the Lincolns of the country say originated at this period? No other right of government over the people of Pennsylvania is here recognized than *their own as a people*. The allegiance to, and government of, the king is done away with, and — what is the substitute? "*The government of the people only.*" What people? "*The people of Pennsylvania.*" These are the very words. No sovereignty or original authority whatever is recognized as being out of the state. These provisions remain in her constitution to this day, though, in 1790, she held a convention to conform the said fundamental law to the federal "supreme

law" she had just agreed to, both laws being alike the offspring of her will.

No candid man can fail to see in Pennsylvania the state or nation. Says Vattel (Chap. I. § 1): "A nation or state is a body-politic or society of men united together, for the purpose of promoting their mutual safety and advantage by their combined strength." This is precisely the description given by Judge Story in his commentaries. [Vol. I. § 207.]

And to this day there has never been ordained, or even thought of, by the said people, one single line transferring or abating her absolutely sovereign authority of government; but she has merely delegated to her "trustees and servants," in her federal and state agencies, numerous "powers" of government, which are to be held and wielded by her citizens and subjects for her benefit, she retaining the ultimate governing power over her territory and people, entirely and absolutely.

As all the people of Pennsylvania consented, actively or passively, to these proceedings and declarations, they consummated and became bound in the republican social compact, this being completed when the independence of the state was established. This was a union of people, forming a body-politic, and it is the only union of people ever formed. Subsequently, Pennsylvania, as such body-politic or commonwealth, associated herself with her sister states, and with them made a union of states. How did she do it? She held a convention; she examined the federal plan proposed; it was stated in said convention by Chief Justice McKean, *nem. dis.*, that the convention derived its whole power from "the people of Pennsylvania," and was elected solely "to ratify" or "to reject" the said federal plan [II. Ell. Deb. 530]; and the ratification was "in the name and by the authority of" "the people of the commonwealth." [I. Ell. Deb. 319.] Thus, as a body-politic, she gave existence and jurisdiction to the federal government in Pennsylvania. Thus, as a sovereign, she confederated, and became one of "the united states."

Webster wrote, in 1819: "The only parties to the constitution, contemplated by it originally, were the thirteen confederated states." In 1830, he said "the states are united, confederated," and that "the constitution is the bond, and the only bond, of the union of these states."

His inconsistent utterances of 1830 and 1833 were simply the sophistry of the advocate.

No parties to the constitution but states were ever contemplated. Chancellor Pendleton, the president of the ratifying convention of Virginia, expressed in that body, most forcibly, the universal under-

standing: "If we (the people of Virginia) find it to our interest to be intimately connected with the other twelve states to establish one common government, and bind in one ligament the strength of thirteen states, we shall find it necessary to delegate powers proportionate to that end." [III. Ell. Deb. 298.]

In fine, as Pennsylvania and her sister republics created the federal government, and delegated its entire authority, our general system can but be a confederacy of absolute sovereigns, — no authority on earth being above them collectively, or — as they are equals — individually.

In the next two chapters I will treat of the social compact, as exhibited in the case of Pennsylvania, and show the absurdity of the modern idea, sophistically taught by Story, Webster, Curtis, and others, that the federal constitution had the effect of forming a nation, and of consolidating and degrading the states to provinces or counties, or rather dissolving them, and forming their elements into a new nation; for this is the practical result of the modern Massachusetts theory, which every word of the federal pact condemns, while no line of history or writing of the fathers supports it.

CHAPTER II.

THE REPUBLICAN SOCIAL COMPACT.

THE object of all society is the protection and welfare of the individual members. In a monarchy or hereditary aristocracy, society is preserved, and the members protected, without regard to their will — the man or class that rules keeping authority by force; while in a republican society the members are voluntarily associated, and the society governs itself. The so-called government, being composed solely of representatives, is necessarily an agency, and the sovereignty, or right of self-government of the community, is in no wise impaired by the imparting or delegating of power to the said so-called government.

A republic is founded on the principle of man's free moral agency. As God made him, and endowed him with the social instinct, both he and the society he forms are God's productions. As man is finally to account for his action here, he necessarily has the power of self-control, — the faculty of choosing between good and evil, — the option to obey or disobey. His final accountability were unjust if he has no free will or volition as to government. It seems then, that, individually and collectively, man is capable of, and entitled to, self-government, and that the only divine right of government on earth is self-government. May we not assume, then, that the republic is God's form of polity?

The difference, in political condition, between a man in a monarchy and one in a republic, is that in the former he is held by force to an indissoluble allegiance, while in the latter he is free to remain a member, or to expatriate himself.

The Social Compact of Pennsylvania. — In the case of Pennsylvania, the citizens participated in, or consented to, the proceedings or declarations set forth in the preceding chapter on "the genesis of a state;" and as he was then, and ever afterwards, free to remain a part of the commonwealth, or to expatriate himself, he, by remaining, necessarily subjected himself to the social compact, and to the obligations thereof.

Was he thus free? Let Pennsylvania herself answer: "Emigration from this state shall not be prohibited." [See her const.] What says Vermont? "That all people have a natural and inherent right to emigrate from one state to another that will receive them." [See her const.; also const. of La., and others.] However, such a declaration is supererogatory, for the principle is vital to a republic, as will be seen.

Contemporaneous Expositions. — I will now present expositions of the fathers on this subject, which no one, in those days, dared to controvert. These are for the double purpose of setting forth these first institutes of freedom, and for confronting the perverters with authorities they cannot deny, or sophisticate away.

Said Tench Coxe, of Pennsylvania, in one of his masterly papers in favor of the plan of the convention of 1787: "The principle on which free sovereignties ought to confederate is quite a new question. . . . Most of the states being in possession of free governments, some have looked for the same forms in a confederating instrument, which they have justly esteemed in their several social compacts." He distinguishes clearly between the formation of a society of people, *i. e.* a commonwealth, and a society of states, *i. e.* a confederacy. [See Am. Mus. for 1788.]

John Dickinson, who had been president of Pennsylvania and of Delaware, and was one of the ablest statesmen and political writers of that period, made, in his powerful arguments in favor of the new federal system, the same distinction that Coxe did between the constituted league of states, then being formed, and the social compact by which individuals formed the state. [II. Pol. Writings.]

Said Noah Webster, in his American Magazine for December, 1787, "The whole body of people in society is the sovereign power, or state, which is called the body-politic. Every man forms a part of this state, and so has a share in this sovereignty: at the same time, as an individual, he is a subject of the state."

Decisive Testimony of Massachusetts. — Passing by the numerous evidences and recognitions of this theory in the constitutions and bills of rights of the other original states, let us quote Massachusetts herself, and let her refute the arguments and assertions of her sons. In the preamble to her constitution she says: "The body-politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good;" and that government is instituted and administered "to secure the existence of the body-politic," and protect "the individuals who compose it," in "their natural rights,

and the blessings of life." Therefore, in the said organic law she declares as follows: "The people inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign and independent body-politic, or state, by the name of the Commonwealth of Massachusetts." She further declares that she has "the sole and exclusive right of governing" herself as a sovereign; that she will forever exercise this right; that she can "institute," "reform," or "totally change" all government at will; that all citizens are her subjects; and that all functionaries of government are her "substitutes and agents."

Here is the deliberate and solemn statement of the members, that they have formed themselves into a body-politic — a commonwealth — a sovereign state. We cannot gainsay or go behind this declaration. They make repeated statements of their sovereignty. [See constitution of Massachusetts.] And all the states at the same time solemnly agreed, by treaty, that each "retains her sovereignty."

By "sovereignty," I do not mean government, but the right of absolute control in all things, including the right to establish governments, *i. e.* governmental agencies. It must be kept in mind that the word sovereignty has but one meaning — that of supreme and uncontrollable authority. [See Webster's dictionary, and all others.] Hence it cannot be predicated of the so-called government, or powers of government, in a republic, for these must always be subject to the organized people — the commonwealth. As sovereignty in a republic necessarily includes the right to establish, amend, and abolish governments, it is simply absurd to say a government in a republic is sovereign.

It is certain, then, from the testimony of this and other states, that a sovereign commonwealth was formed and consummated by social compact; and that it existed and acted as such, in making the union or federal system.

The Rationale of Our Social Compact. — It is obvious that if a man can change his membership from one commonwealth to another, he is, by remaining in the first, under the obligation of being a part of it; of being governed by it; and of performing all the various duties which its existence and welfare requires of him; the reciprocal obligations on the society's part being the protection of him in his life, liberty, and means of happiness. This mutual understanding, and the reciprocal obligations thereof, do exist, and are the actual conditions of the society's existence. They constitute all the elements of a compact, which, though only implied, form not the less the political and philosophical entity. By and through such social compact, the republic must exist.

The members are the community; and each of them is obviously merged in it, and entirely subject to its control. His political status is fixed, and his citizenship is an integral part of the community. From the nature of the case, he can reserve no political rights; so that the idea of his co-operating with the citizens of all the states, to form a nation by a second social compact, is too absurd for comment. The matter of organizing society had been completed. Each state had every possible characteristic of a nation, and, whether it federated or remained single, it could act as such, for it was a moral person, with all mental attributes, including will. In forming the union, then, the matter in hand was government, not organization of society. Government could but be delegative, and if society was not already completed, and capacitated for political action, it was incapable of doing the delegation. Preformed states did actually do such delegation, and they were named in the compact as the bodies to constitute, and carry on, the federal system of government. The states, then, being perfect political bodies, the citizens were merged completely therein: and could, in no way, act again in forming society.

Aiming to make my argument of the best possible and, in the main, undisputed authorities, I quote the following: Vattel, in Book I., Chap. I., after describing the nation or state, proceeds: [§ 2] "By the very act of the civil or political association, each citizen subjects himself to the authority of the entire body, in everything that relates to the common welfare. The authority of all over each member essentially belongs to the body politic or state."

In Chapter II., § 16, he says: "In the act of association, by virtue of which a multitude of men form together a state or nation, each individual has entered into engagements with all, to promote the general welfare, and all have entered into engagements with each individual, to facilitate for him the means of supplying his necessities, and to protect and defend him. It is manifest that these reciprocal engagements can be no otherwise fulfilled than by maintaining the political association. The entire nation, then, is obliged to maintain that association; and as their preservation depends on its continuance, it thence follows that every nation is obliged to perform the duty of self-preservation." "This obligation," he further says, "is natural to each individual of God's creation, and is derived to nations from the agreement by which civil society is formed: . . . it supposes a human act, to wit, the social compact." See to the same effect, I. Blackstone, 47; also Lieber's view [Pol. Eth. Chap. VIII. § 917]. The above statement of Vattel is correct and philosophical, at least as far as the law of being of a republic is concerned. Further,

the present author saith not. ROUSSEAU, in his "Treatise on the Social Compact" [Ch. VI.], most conclusively sets forth the republican social compact, and states the object of the association to be, "to protect and defend, with the whole force of the community, the persons and property of each individual." And HUME, though writing before the British provinces became American republics, forecasted or recognized the very principle of the social compact, which became the law of their being, as states. [Hume's Essays, No. XII.] And the great Burke said: "Society is indeed a contract." [See his French Revolution.]

But let us take a step further. These bodies were formed for self-government, and

Government is Mental and Functional. — All acts of government are acts of mind, and mind must dwell in a body, and act through its organs. In our system, the only possible body for original governing mind to dwell in, is an organized society of people — a state. And whatever is done in making institutions of government, and putting them in force, through laws and the execution thereof, must be functional (for such acts are precisely what society and its mind were made for), just as thinking is functional to the brain, and digesting to the stomach. Hence such action in no wise touches, let alone impairs or changes, the existence, essentials, or authority of the commonwealth. And it is of this mind and its right of investigating, thinking, reasoning, judging, and willing, that sovereignty is alone predicated. And this dwells — not in persons, but — in the collective mind of the people — in the corporate body called the commonwealth, republic, or state — the "moral person" as Vattel and others call it; "the moral collective body," to use Rousseau's phrase.

Constituting the General Government was Functional. — It follows from the above, that ordaining and establishing the constitution was functional action of the states. They could, and did, through their deputies, meet in "the convention of states," as Hamilton and others called it, and deliberate upon and mature a plan of union and government. They could and did send the plan to the congress of themselves. They could and did, in congress, send the plan to each one of themselves, for separate adoption or rejection. Each state could and did, of her own motion, in her own time, and wherever she pleased, call a convention to say whether she would join the "union of states," and be one of "the united states," or not. Each was unlimited as to deliberation, and as free to reject as adopt. All finally adopted, thus doing the only acts history mentions, or even hints at, towards ordaining, establishing, and vivifying the constitu-

tion. And afterwards, in the same functional way, each chose and sent her allotted part, or quota, of the *personnel* of the government, to administer it — those she sent, being her own "members," "citizens," "substitutes," and "agents," as all the fathers and all the states considered and called them. And, finally, upon this point, the right to amend — identical with the right to abolish — is to be exercised functionally by the states — [See Article V.] this indicating the continued existence of the state, with the same mental machinery to amend, that adopted, and necessitating the same functional action in the future.

A Clear Conception of the States is needed, and by a moment's thought the reader can get as precise and clearly defined an idea of them, as he can of thirteen men, horses, dogs, steamboats, or eggs. Thirteen entities, or pre-existent things called states, were named and provided for in the constitution, as the united states. They had already appeared in history, and often acted. Look at their names, and reflect. The word Pennsylvania (or Massachusetts), for instance, means a distinct thing, with area, people, organization, mind, power, right, duty — all distinct and peculiar. Such entities (and there were thirteen of them) were unsusceptible of being made one, without being, *ipso facto*, destroyed. If their people were then made into one state, they cannot now be united states. This shows why Webster said, in 1850, — near the close of his life — as heretofore quoted: "The states are united, confederated — not, chaos-like, together crushed and bruised." "The constitution is the only bond of the union of these states." See also his remarkable speech in 1852, at Annapolis. [See p. 210, *supra*.]

Divine Right. — The mind and capacity for, and the right to, self-government, are Divine creations and gifts, whether in a person or society; and such mind is alike the seat of self-government, and of the instinct of self-preservation. Self-control, both of persons and states, and human accountability therefor, are the only ideas on this subject that consist with the revealed plan of the Almighty Father and Governor. And to assail either person or state with violence, is attacking one of God's beings, for, as man is created with a social nature, society, not less than man himself, is a creation of Deity.

The Divinely ordered social instinct, then, causes society. This republic, commonwealth, or state, has the God-given right of self-government, which it exercises through mind, and functionally. It and its fellows get together, in federal or league-al compact, voluntarily. When did involuntariness come, so as to make the indissoluble union?

If named pre-existent bodies of people were united or associated, how did the said bodies lose their separate integrity, so as to become part of an aggregate nation of people?

If, by the revolution, the communities called provinces became states, how did they lose the "sovereignty" all declared each to possess, and again become provinces or counties?

CHAPTER III.

SOCIAL-COMPACT FALLACIES.

THE EXPOUNDERS ON THE SOCIAL COMPACT.

STORY, Webster and Curtis aim to show that the people of all the states, by a second social compact, formed a nation, called the "united states" — an absurdity like saying that thirteen persons were formed into a person, called the united persons. Moreover, the forming of such nation of individuals would require that the constituents should be free to act. This could not be, for each was bound, in political matters, to be governed solely by the body-politic he belonged to, and to act only as part of said body. Indeed, his political authority was confined to that vote, which the body delegated to him, to be used as a part of the means of determining her will; and he actually exercised this privilege by voting for the members of her ratifying convention, through which she willed to adopt the federal pact. The formation of the national society in question would have necessitated the dissolving of the state, and the absolving of the citizen from his obligations. We know this was not done, because the states are named in the pact as "the United States;" and they went, with their citizens, into the union unchanged. And no citizens are recognized in the said pact, but citizens of the several states.

The expounders argue that the state constitutions are not social compacts, but fundamental laws. [I. Sto. Com. § 333 *et seq.*] This is entirely true, but the constituting of society is one thing, and the constituting of government another. The social compact is the law of the society's or state's being, whilst the constitution must be the law of the government's being, or, in other words, the law creating, directing, and controlling the government of the said society, which is the pre-existent and law-making body. History plainly distinguishes the law of being of the community from the law of being of the government; for when the first constitution of Massachusetts — that of 1780 — was formed, she had been a perfect community — a body-politic, for many generations, requiring nothing but independence to make her a sovereignty; and when Pennsylvania's first constitution

was formed, in 1776, she had, for about one hundred years, been a complete body-politic, governed by William Penn and successors, under the sovereignty of the British crown, merely lacking the independence which the war consummated, to make her a perfect, sovereign, and uncontrollable state. First, then, we have, as a fact, the complete and absolute state — identical with its members — they voluntarily associated. Essential to this state is a political will. Second, we have, as a fact, the government — state or federal — the creation of the state's will. To make the former agency, the states acted severally; to make the latter, federally. The constitution, in either case, is the expression of the will of sovereignty, the law of being of the government, and the evidence of its existence and "powers."

A Misstatement exposed. — It is, then, a mere subterfuge of the expounders, to assume that somebody regards the constitution as a social compact [I. Sto. Com. § 333], and proceed to show, as if in refutation, what nobody denies, to wit: that it is a fundamental law, and not a social compact. On this point, as usual, Massachusetts, their own cherishing mother, confounds them, as I shall now show, exposing, at the same time, a misquotation. Story says [Ibid.] that she declares, in the preamble to her constitution, that "government is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole government."

This is a misquotation. The true one is to be found on page 283, *supra*. She says "the body-politic is formed" by "a social compact" — not that "government is a social compact;" and she states the compact to be by "each citizen with the whole people" — not with the "government." He seldom, if ever, quotes correctly, or argues fairly, on these subjects.

After stating the compact, the body, and the object in view, she continues: "It is the duty of the people [*i. e.* the preformed body], therefore, in framing a constitution of government, to provide for" just laws; "for an impartial interpretation and a faithful execution of them." Her idea, then, was that the preformed body was to establish the constitution of government. [See Const. of Mass.]

Nay, more, both she and Pennsylvania declare that the people [*i. e.* the pre-existent body-politic] have the inherent right to institute, amend, or abolish government, or constitutions of government, — thus again showing the social compact to be one thing, and the constitution of government another. And they never dreamed that abolishing the government of their creation, was abolishing society or abdicating self-government, and bringing anarchy and chaos, as some pretend to think; for they were conscious of being republics, formed indepen-

dently of, and remaining above, their constitutions of government. They were themselves the real government, and hence there could be no interregnum resulting from a change of mere agencies. Indeed, lightning might strike and destroy either federal or state government, and leave the state herself uninjured, and even unjarred, to proceed, for her safety and welfare, to make another. In fine, the two ideas of a man, and his self-control, are not more separate than the two ideas of a society, and its self-government.

For the want of information, and clear and unprejudiced thought, on these subjects, in 1861, many clergymen went almost wild. Rev. Dr. Breckinridge said: "Secession is a proceeding which begins by tearing in pieces the whole fabric of government, both social and political." "Its very design is . . . to annihilate the institutions of the country," etc. Rev. Dr. Hodge, of Princeton, argued similarly. Rev. Dr. Junkin filled a considerable book with such matter, and properly called it "Political Fallacies," for one more true to its title was never published.

Specimens of Expounding on this Subject. — It is well to group here two or three of the extraordinary expoundings on this matter. It is fatal to the "school," that the original republican society must exist by the consent of the members to be, and act, as a society; and that hence the states must be independent in existence, and sovereign in will — our general system being a republic of republics, or federation of republican states.

Therefore, they pretend to explode the actual social compact, and assert, in substance, that the constitution of the united states is the constitution of a state, or nation of people, in which the quondam states have become subdivisions, while their rights and powers are reserved to them, by the said nation, in the said constitution. They more than intimate that the people of all the states, "in the aggregate," formed a second social compact, doing away with all the original ones, and making themselves one state.[1]

John Quincy Adams goes farther back. — This, in substance, is the contention of Story, Webster, and Curtis, to which I will add the surprising statement of that wiser politician, John Quincy Adams. Seeing the pre-existence and continuation of the states to be fatal to the national theory, he concluded to have them strangled at their birth by the infant Hercules of American nationality; so, at Boston,

[1] Mansfield, in his Political Grammar; Brownson, in his American Republic; Jameson, in his Constitutional Convention; Draper, in his Civil War; Greeley, in his American Conflict, and others of that school — all seem to deny that the original communities or republics were formed by social compacts; and affirm that the nation was so formed. Their theories are remarkably varied and inconsistent, showing the want of facts. But to such arguers facts are trammels. They prefer figments!

on the 4th of July, 1831, in Faneuil Hall, he discordantly orated as follows: "The Declaration of Independence was a social compact, by which the whole people covenanted with each citizen, and each citizen with the whole people, that the united colonies were, and of right ought to be, free and independent states."

This remarkable assertion is entirely unfounded. The instrument promulgates great general principles; and, after detailing reasons therefor, simply declares the independence of the states, who, in congress, make the declaration.

"Hotchpotch." — I will, *en passant*, cite without comment, and as a curiosity, the statement on this subject of Professor Jameson, of the University of Chicago, in his "Constitutional Convention" (p. 29): "The people of the United States, in 1789, threw the existing constitutions of the several states into hotchpotch, and repartitioned among those bodies the powers they were thenceforward to exercise, giving a portion thereof to the states, a portion to the general government, and reserving the residue to themselves."

Hume's Explosion. — The expounders, determined to show that the people were lying loose, so that the fathers could, in 1787, herd or aggregate them into a nation, assert that Hume exploded the social-compact theory, thus depriving our states of their law of being. We have already seen that his explosive dynamics did not blow the social-compact idea out of the Massachusetts organic law, and we will now see that he did not affect our precious social ties at all.

In his Essay No. XII., written in 1752, after exposing the fallacy of various European theories on this subject, he proceeds to say: "My intention here is not to exclude the consent of the people from being one just foundation of government. It is surely the best and most sacred of any."

Here, then, was forecasted by that great man the very law of republican being, the vitality and cohesive force of every commonwealth, — the "consent or will of the persons forming it." Indeed, the whole philosophy of the republic is comprehended in that one sentence. Such, too, was the theory of Edmund Burke.

The true idea of the Declaration seems to have passed away with the fathers, — there not being virtue and understanding enough in American politicians to keep it alive. The consent, which was declared to be the only just foundation to government, was the consent of the party to a contract. The consent of the people, as heretofore remarked, means the will of the people.

Think of it! "Consent of the governed" is a phrase of no value, except in the sense I mention. Poland, Venetia, and Ireland, yielding to tyranny, consent. All slaves consent. Order reigned in Warsaw

because of consent. And, finally, wherever peace has been made by desolation, the trembling wretches, hid in caves, were willing to consent to any terms.

No! no! Messrs. Politicians, when the American people, as they are organized and capacitated to act, do absolutely govern themselves, both domestically and federally, then will be restored the consent of the social compact, and of the Declaration of Independence, but never before!

The State rules in all Things. — The change, by independence, from a province to a state, was necessarily a change from subordination to supremacy. Sovereignty is the very thing that distinguishes a state from a county or province. We have found that Massachusetts was formed by social compact of her people; that, as a commonwealth, she is absolutely sovereign, and that her citizens are completely her subjects. The citizens, then, being merged in, and controlled by, the state, could, by the state only, be subjected to the federal pact, government, and laws; and he obeys these solely because the state commands it.

The Germ of the Republic. — It is evident, then, that the states of America reversed the monarchical principle of indissoluble allegiance, — "once a subject, always a subject," — and established the one that each individual could, of inherent right, migrate and establish new social relations at pleasure; and, consequently, that his obligations to the community rested solely on his voluntary engagements. This necessitates the social compact, and shows it to be the germinal idea of the republic, and this body to be self-organized and self-governing. And it is further evident that the germ of political freedom is in the member of the society.

The Society called Pennsylvania. — We see, then, that Pennsylvania, composed of her voluntarily associated members, on becoming free from England, became sovereign herself, and that afterwards, with entire individuality, and with sovereignty unabated, she federalized herself in the present union.

The Polity is Self-government of Societies. — Not a line in all American history even hints at the formation of any other societies, communities, and commonwealths of persons than states, or of these bodies having any limitation whatever on their capacity or power. These states were organized and complete, were pre-existent bodies, at the time of federation. They met in the convention of 1787, planned the federal constitution of government, and by their respective sovereign wills — evidenced by their respective ordinances of ratification — gave to it all the life and power it ever had or could possibly have; and they put it in operation by electing and sending their citi-

zens and subjects to exercise, as "substitutes and agents," the powers they, the said states, delegated.

Then, as each state made her home government, it is certain that the American polity was the government of states by themselves, — jointly in general affairs and severally in domestic ones.

And it must strike the reader, that if these societies are still provinces or counties, or under external control in any sense or particular, they revolutionized against Britain in vain! If their only *status* and powers are (as "the school," through Lincoln, assert) fixed by the nation in its constitution, not only the several states are provincialized, but "the united states," the very association declared to be "the government," are subjected to the nation, and are under the arbitrary power of that nation's agency, which, according to Webster and Curtis, decides finally on all questions as to its own power. [See pp. 160, 202, *supra*.] Appeals to the nation, even if possible, would not be prompt and practical. It has no will and no capacity for action. Remedy should be right at the heels of wrong, especially in such matters as liberty and sovereignty. *Civitas ea in libertate est posita, quæ suis stat viribus, non ex alieno arbitrio pendet.*[1] [Livy.]

[1] "That state alone is free which stands upon its own strength, and does not depend on the arbitrary will of another."

CHAPTER IV.

SOCIETIES ARE SOVEREIGN.

ALL our history and governmental philosophy teach, as we have seen: —

1. That republican sovereignty resides in, and never leaves, the people.

2. That "the consent of the governed," referred to in the Declaration of Independence, as the only just basis of the government, is the consent, or rather will, that forms society and institutes government. The people consented, or rather willed into being, agencies, both for their federal and their state affairs.

3. That "the people of the united states" politically exist and act only as commonwealths.

4. That, as commonwealths, they "ratified," and thereby "ordained and established," the constitution.

5. That they federally associated, in the character of sovereign commonwealths, to govern themselves, conjointly in general affairs, *i. e.* to act as a union of republican states, or a "republic of republics;" while each continued to govern herself in all home affairs.

All our history is consistent with this view, especially the unanimous declaration of opinion of the convention of states of 1787, that "the united states" are "the government," and that the name, "the united states," means the people as states, and not the people as a state or nation. [V. Ell. Deb. 377, 382.]

Now, having seen precisely where sovereign mind or will is, having, in other words, seen the body in which it dwells, and the exclusively functional character of its action, let us note how it manifests itself in our republican government. Look at the necessary

Grades of Authority. — All people agree that sovereignty made the constitution, federal as well as state, and that this instrument provides for, directs, and controls the government, which in turn rules the persons and things subject to it, *i. e.* the people and their belong-

ings. To illustrate, I will draw four horizontal lines, to represent the different grades spoken of: —

1 SOVEREIGNTY — THE PEOPLE.

2 THE CONSTITUTION.

3 THE GOVERNMENT.

4 THE PEOPLE AS SUBJECTS.

We see here that the people govern, and the people are governed. This necessitates, in each republican citizen, two capacities, one corporate and political, and the other personal. In the former, he is a member and an integral part of society, and therefore a part of the governing authority, and in the latter he is a subject. It is, however, only as a commonwealth that the citizens have political sovereignty, this being only predicable of an organized community.

An amusing Mistake. — Owing to ignorance or forgetfulness of this double capacity of citizens, our modern so-called statesmen, in their expositions of the constitution, make most amusing mistakes. Mr. William M. Evarts, in defending President Johnson against impeachment, in 1868, thus alludes to the people: "Masters of the country, and masters of every agent and agency in it, they bow to nothing but the constitution." By not heeding the above distinction, he makes the people, in their governing capacity, bend the knee to their own authority, — a genuflexion impossible even in Utopia, and the very one alluded to by Gov. James Sullivan, of Massachusetts, as follows: "You may as well attempt to erect a temple beneath its own foundations as to erect a government with coercive power over itself." [Amory's Life of Sullivan, Vol. I. p. 231.] Hon. A. H. Stephens makes the same error in his "War between the States" [Vol. I. p. 40]: "The exercise of supreme law-making power, even over the authority delegating it, may be legitimate, so long as the delegated power is unresumed." This simply means that so long as sovereignty allows its delegations to remain in its created agency, it is subject to the government and coercion of that agency. By parity of reasoning, if Mr. Stephens were to give his son, or head-servant, authority over his household affairs, it could be used to command him, and coerce his obedience. But Mr. Stephens only follows, though he does not cite, illustrious authority. The Supreme Court of the United States, in McCulloch *vs.* Maryland [4 Wheaton, 316], says: "The government of the union is a government of the people. It emanates from them, its powers are granted by them, and are to be exercised directly on

them, and for their benefit." Recently, the so-called *national* supreme court have made the error more flagrant and hurtful, completing the perversion, as follows: "Citizens are members of the political community to which they belong. They are the people who compose the community, and who, *in their associated capacity, have established or* SUBMITTED THEMSELVES TO THE DOMINION OF A GOVERNMENT," etc. In other words, they are subject, as states, and as united states, in the same degree that they are as individual men, to the dominion, *i. e.* the "absolute supremacy" of the government they established! Many similar quotations might be given, for this idea is very common with "the expounders" and their confiding followers. It is, indeed, an essential part of the expounding theory; and it is a mystery how Mr. Stephens, who is really on the opposite side, could have mixed such an error with his truths. The advocates of this theory dare not reason about the two capacities of citizens, for it suggests two lines of thought, both of which lead inevitably to the body-politic, in which the citizen is absolutely merged, and in which sovereignty must dwell; to the fact that the state is the only such body ever formed; and to the conviction that the said "expounders," in promulgating such theory, intended to mislead, or did not understand the subject.

The People govern the People. — They, as sovereign society, govern themselves as subjects. Any member of an ordinary corporation who can think, will readily see the two capacities, because he is a constituent or integral part of the moral or jural person, which the body corporate is, while he is, as a natural person, subject to whatever authority the corporation has, and holds no right whatever to the franchise and the property of the body; and he has simply a right to vote, to help make up the mind and express the will of the said corporation. So, in the republic, the member is an integral part, and holds his undivided share of the governing power, while in every personal act he is a subject, even voting as such under, and by virtue of, the commonwealth's law, to help express the will of the body-politic, just as members of an ordinary body corporate do, under their charter, to reach the *conclusum universitatis.*

The federal constitution itself, as I have shown, recognizes every person, who has a civil or political *status*, as a member and citizen of a state. [*Supra*, 151.] Hence, I divide the upper line, representing the people, *i.e.* the sovereignty, into thirteen parts, viz.: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, and draw a line from each to the constitution, to indicate the impartation of life and validity to that instrument. Then, the above illustration would be thus modified: —

THE PEOPLE AS SOVEREIGN COMMUNITIES.

N. H.	MASS.	R. I.	CT.	N. Y.	N. J.	PA.	DEL.	MD.	VA.	N. C.	S. C.	GA.
					THE	CONS	TITUT	ION.				

THE GOVERNMENT.

THE PEOPLE AS SUBJECTS.

This precisely shows the system contemplated. The republics were to remain uppermost, unconsolidated, sovereign, and self-joined. They themselves were to govern, and the institutions of government were the constitutions of so many agencies. There can be no evasion or denial of this statement, for the absolute and independent act of each state's will, through her convention, ratifying and establishing the constitution, as to herself and her people, is shown in Part II.; and these independent acts, at different times during three years, are shown to be the only acts giving existence to the federal system. The system, therefore, is to be treated as the offspring of the mind and will of the people, whom God has commissioned to govern themselves, and is to be regarded as the most sacred of earthly things, — the very ark of the covenant!

The People, then, are subjected, if the treasonable theory under notice be carried out; and the fence — to use a homely but expressive figure — must be reset, according to the formula of the "school," according to the notions of President Lincoln, and according to the manifesto of the Philadelphia conclave of 1866, as follows: —

THE CONSTITUTION.

THE GOVERNMENT. (ABSOLUTE SUPREMACY.)

				THE	QUON	DAM	STAT	ES.				
N. H.	MASS.	R. I.	CT.	N. Y.	N. J.	PA.	DEL.	MD.	VA.	N. C.	S. C.	GA.

Not a word in history favors such a collocation of the grades of authority; and, as the states individually covered the whole ground, and collectively devised, and afterwards individually ratified, and thereby "ordained and established" the constitution, and delegated powers to its agency, it is absolutely impossible that a nation, or republic composed of the self-same people, should have done the same thing at the same time.

Besides, as Webster admits, "sovereignty in government is unknown in North America." The real government is the republics, wherein sovereignty ever dwells. They virtually said: "We will unite and govern our subjects *as if* a nation, in a certain number of respects; but the *quasi* nation is, of course, the offspring of our sovereign wills." Just as *they* did, the sovereigns of Europe could do, without placing the agency above themselves, or making an indissoluble union. What is to prevent *their* governing *their* aggregate people, *as if* a nation? Sovereignty is always and everywhere of the same nature and supreme.

Madison is conclusive on this subject, in Number 39 of the Federalist. "Each state," says he, ratifies, "as a sovereign body, independent of all others, and only to be bound by its own voluntary act;" and therefore he asserts it to be "a *federal*, and not a *national* constitution." The italics are his. Furthermore, after dealing with the establishment, the parties, and the powers vested by the states, he says: "In the operation of these powers, it is national, not federal." In other words, as to these powers, the states govern their subjects *as if* a nation. The reader who desires to stand on truth and common sense, should study Number 39 of the Federalist. [See App. D.] Let him also note Madison's statement in the Virginia ratifying convention, that this is "a government of a *federal* nature, consisting of many coequal sovereignties." [III. Ell. Deb. 381.]

All publicists speak *idem sonans* on this subject. Says Vattel: "Several sovereign and independent states may unite themselves together by a perpetual confederacy, without each, in particular, ceasing to be a perfect state." Their "deliberations in common," he continues, in no wise abate "the sovereignty of each member," though "the exercise of it" may be diminished, "in virtue of *voluntary engagements*." Montesquieu, Brougham, De Tocqueville, and Lieber speak to the same effect.

The Subjugation of the Commonwealths, above depicted, has been wrought by their members, their citizens, their subjects, their "substitutes and agents," — "bone of their bone, and flesh of their flesh!" These traitors say that "the government," meaning themselves, has "absolute supremacy" over people and states, so far as its powers go, it being itself judge of how far that is, and having the right to preserve itself; that the states are counties, with no *status* or rights, except what "the nation *reserves to them* in its constitution."

In short, they say precisely what the above illustration does; and we, the victim-people, are reprovincialized, while all the fourth-of-July thunders of the last hundred years have become as unmeaning as they were harmless. Britain holds provinces mainly for commercial

advantages. She wants these, without much of the burden of government and protection. She has precisely the politico-commercial arrangement she wants, while we — happy people! — have the glory of a corporate, in exchange for a personal, king!

"National Sovereignty" no better. — The perverters gain nothing by saying, "We mean national, instead of governmental, supremacy," because no power or means was ever provided, or contemplated, for its enforcement over states, by coercion of any kind; while not only was such coercion intentionally kept out of the system, but was severely reprobated, and most carefully guarded against, as will be seen. The fathers strongly condemned this very idea of coercing states, whenever it was presented, especially in the convention of 1787, as well as in the several ratifying conventions, and carefully excluded it from the constitution. [See Part III., Ch. VII.] Moreover, fearing its possible rise from implication, they counselled and induced the states to adopt Amendments IX., X., and XI., to forefend the danger. But this important matter will be distinctly treated, for it involves absolute and independent proof of the sovereignty of the states in the union, while as a crucial argument, testing, as it were, previous ones, it will be found invincible.

Though the above theory of the expounders is testified to by a "cloud of witnesses," namely, all American politicians, yet any child, of larger or smaller growth, will see, by looking thoughtfully at the above illustration, and what the four lines symbolize, that it is as impossible for government to get above and control sovereignty as it is for Mr. Stephens to carry himself, a girl baby to be its own mother, or a bottom-rail, *ex proprio vigore*, to get on top. The simplest mind can readily see that it was, with the fathers, an accepted principle that the states are not subjects of government, but are *themselves the government*, — being republics or self-governing peoples, acting through representatives, *i. e.* "substitutes and agents," and that this was why they kept coercion of states out of the constitution. And such mind, even with cursory reading, must see that Washington, Hamilton, Madison, and all the rest of the fathers, considered "THE PEOPLE of the united states," as organized, as the top rail (to repeat the striking figure), the constitution as the second, the government as the third, and the people and their belongings as the bottom one, and must, therefore, despise the statement that "the government" has, in any sense, or over anything whatever, "absolute supremacy," as was asserted by the Philadelphia convention of 1866. Nay, more, such mind will insist on "the expounders" proving the *when* and the *how* of the change, from the admitted *voluntariness* of the "union of states," to the present alleged *involuntariness* thereof!

"The Government" claims to be Paramount. — To realize the enslavement of the states by the corporate despotism, read the following from the Philadelphia convention's address of 1866, in the light of Lincoln's views, the legislation of the last fifteen years, and the recent *dicta* of the federal supreme court, to be presently quoted: "In two most important particulars, the victory achieved by the national government has been final and decisive. First, it has established beyond all further controversy, and by the highest of all human sanctions, the absolute supremacy of the national government, as defined, etc., and the permanent integrity and indissolubility of the federal union," etc.

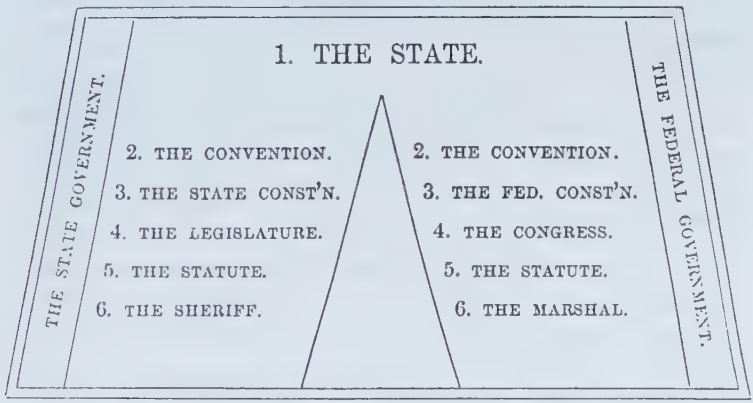
Furthermore, not only have the congress and the President, without the warrant of the constitution, or even of the amendments, old or new, claimed supremacy over the states, single or united, but the federal supreme court, the last hope of state defence, decides that the government is "a government of the states in their political capacity," "*is supreme and above the states*" to the extent of its powers, *that extent*, according to all these perverters, *to be determined finally by the government itself.* [United States *vs.* Cruikshank, 1876.]

The Preamble and Article VII., with the ellipses filled according to fact, would be as follows: "We, the people of the united states [as socially organized and capacitated to act, each state exercising her sovereignty], in order to form a more perfect union [of such states than the previous one], establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the [said] united states of America." Article VII. is consonant. "The ratification of the conventions of *nine* [of the thirteen] STATES shall be *sufficient for the* ESTABLISHMENT *of this constitution*, between the STATES *so* [*i. e.* by conventions] *ratifying* the same."

Societies of People unquestionably ratify, and thereby "ordain and establish" the constitution; and hence, before the supreme sovereignty of the people, as commonwealths, the *fasces* must always be lowered. It is as true as Heaven or Deity, that these states, of their own volition, federalized themselves. It is equally true that, as the states voluntarily bound themselves as united states, so bound must they remain, if they be republics, free states, self-governing people. How is it that, in 1788, these states were in the top grade of authority, when 1861 found them in the third? What words, figures, or meanings of the constitution were changed between the two epochs?

Experimentum Crucis. — The truth of the above collocation of grades can be strikingly and decisively proved to the simplest mind

by an experiment — a crucial one. Let him trace the authority of a sheriff, or United States marshal, through all the links up to the original source, keeping it in mind that at or before the adoption of the state, or the federal, constitution, the people were never organized except as states, and had no capacity whatever for political action, except as such. The said state (*i. e.* the collective people) investigates, reasons, judges, and wills through a convention. This, by vote, determines and speaks her will, as an independent political unit. Thus, a convention adopted a federal constitution for a given state, and a convention adopted the state one. Hence, the chain in the two cases will appear pictorially as follows: —



To establish their respective state constitutions, the states acted separately. To establish the federal one, they acted independently in power, time, and place, but conjoining their wills in the ordaining of it. The last has no other life and power than that derived from the states. History, by showing this, proves the system to be a federation of sovereignties.

If we, in the above mode, start from any federal institution or functionary, and go up through the chain of actual and historical impartations of power to the source of all authority, we shall inevitably reach the self-organized and self-governing commonwealths of people. Look at that stupendous enginery of power, the army and navy, for instance. They are controlled by their officers, and these by the commander-in-chief. Is he sovereign? No; he and they are alike under a law, hired, told what to do, and paid wages. Is "the government," the legislative part of which made the law, sovereign? No; the congress and president, as well as the judiciary, are provided for and authorized in the constitution, and are engaged, as persons, for

service, at stated wages, told what to do, and paid for their work. Is it the constitution, then, that is sovereign? No; this is a fundamental law, ordained by conventions. Are (or were) these sovereigns? No; they were mere delegative bodies, acting for the people, *i. e.* the states, — the said people being only organized and capacitated to act as states. As such, they exercised their wills upon a plan or system they themselves had had prepared, and ordained and established the same, as their federal (or league-al) constitution. Such wills existed and operated within them, and survived the act of establishment, to watch the workings of the system, and amend (according to the pact) or abolish, as might be deemed necessary. Each, according to its nature, must act for itself. It cannot bind itself not to act, — cannot, indeed, relinquish the right of reversing its will, and dissolving its self-imposed tie.

Complete Corroborations. — Whenever the above test is applied, the states themselves will appear as the real sovereignty and government of the country. *They* must be *the government*, because they are republics, that is, *self-governing bodies* of people. And the federal pact entirely corroborates this view, by calling the system "the united [*i. e.* associated] states," and the agency of it, "the government of [*i. c.* belonging to] the united states," to say nothing of the fact heretofore mentioned, that the convention of 1787 unanimously declared that *the government*, under the constitution, was to be, and to be styled, "*the united states.*" [*Supra*, 201.]

The government, then, is states, — "the united states," — and the institution at Washington necessarily an agency or joint-commission. The right of this thing to be, and act, was "written by the mighty hand of the people" [federal supreme judge, Patterson], and, if it swerve one hair from its authorizations, the mighty foot of the people should crush it!

Again, as above shown, the constitution and Amendment X. prove that there are no powers out of the people but delegated ones; so that the whole government must be acting with "POWERS," not its own, but belonging to superior authority, — *i. e.* the people, — whether as a nation or as states.

[1] What is a "power"? In a procuration, a commission, a compact, a deed, a constitution, a will, a lease, or any other instrument, it is an "authority, which enables one person to do an act for another." [See Burrill's Law Dic.; Sugden on Powers; Kent's Com.] The *only* valid acts, then, of "the government" consist in *using the powers of* and ACTING FOR, the superior authority it represents, *i. e. the people.*

The first federal chief justice, John Jay, not only recognized that the delegations of power were made by the state to the united states, and not to the government, but he declared that this joint-agency received "that part of the people's business" intrusted to them, "*not for themselves, but as the* AGENTS *and overseers for the people.*" These are his very words. [See his address to the people of N. Y., I. Ell. Deb. 496.]

Again, the persons who compose "the government" are members and citizens of the separate states, who emerge from them to serve as their agents during a term, or good behavior, and then are lost, as drops in the sea. And it is these *ephemera* — "insects of the hour" — who claim absolute supremacy over, and the allegiance of, the very commonwealths that breathed them into being! It is these creatures that claim the right to draw from their sovereigns and creators, the men and means to subjugate them with. It is they who claim the sovereign and final right to decide the extent of their own powers, and the right, in cases of necessity, of which they are to judge, to exercise all the powers outside of the constitution.

A fit Summing up hereof, by James Wilson. — This government, by the commonwealths, of their people, is our polity, which "the school" have long tried to conceal. James Wilson, one of the profoundest statesmen and jurists of the era of the constitution, presented the grades I have indicated as follows [II. Ell. Deb. 432]: "To control the power and conduct of the legislature, by an overruling constitution, was an improvement in the science and practice of government, reserved to the American states. Perhaps some politician, who has not considered with sufficient accuracy our political systems, would answer, that in our governments the supreme power was vested in the constitutions. This opinion approaches a step nearer the truth, but does not reach it. The supreme, absolute, and uncontrollable power *remains* in the people. As our constitutions are superior to our legislatures, so the people are superior to our constitutions. Indeed, the superiority, in this last instance, is much greater, for the people possess, over our constitutions, control in act, as well as right.

"The consequence is, that the people may change the constitutions whenever and however they please. This is a right of which no positive institution can ever deprive them. To the operation of these truths we are to ascribe the scene, hitherto unparalleled, which America now exhibits to the world, — a gentle, a peaceful, a voluntary, and a deliberate transition from one constitution of government to another. . . . Oft have I marked, with silent pleasure and admiration, the force and prevalence, through the united states, of the principle, that the supreme power resides in the people, and that they never part with it."

He referred alone to the people as commonwealths, and characterized them as "*thirteen independent* SOVEREIGNTIES," in his great speech of October 6, 1787, — the first, most conspicuous, and most important speech that was made in advocacy of the federal system, after its promulgation on the 17th of the previous month. [See Am. Mus.,

Vol. I.; Mass. Cent., Oct. 24, 1787.] His fundamental idea ever was, that the sovereign "power is in the people before they make a constitution, and remains in them after it is made." [See Part II. Ch. VI., *passim.*]

We have presented to us, then, by this great constitutionist — and all the leading fathers were consistent with him — precisely the grades of authority I have set forth: —

1. The people, as sovereign states.
2. Their *federal* constitution.
3. The government provided for in it.
4. The people as subjects, and their belongings.

CHAPTER V.

SOVEREIGNTY ONE AND INDIVISIBLE.

WHATEVER was done in establishing the constitution of government must have been done by sovereignty. Of course, I speak of voluntary action, *i. e.* free exercise and effectuation of will. So that, if any sovereignty was put in the federal pact, sovereignty must, *ex mero motu*, have divided itself. It must have exerted its will, whether it intended to divide itself or delegate powers. When this will was exerted, the constitution was made and established, and the said *will* necessarily *existed through the act.* We know, then, that it was not sovereignty, but *something else*, that was put, *by sovereignty*, in the federal pact. The instrument itself says it was "powers," and that they were "delegated." "Powers," then, were transferred, while the will that did it remained untransferred, in the moral person or persons that acted. We know it did thus remain, for it was exercised by each state on the proposed amendments, several years afterwards. Here, then, we have absolute proof that there is *no sovereignty in the constitution*, and that *sovereignty is out of it, and in the states* who ratified and ordained it.

Imagine Kaiser William's Authority divided. — According to philosophy and common sense, the essential idea of the superlative word "sovereignty" is of *a will* that rules over *everything* in its territory; and this will presupposes all the other attributes of a perfect mental unity, through which those conclusions of judgment shall be made, and those determinations of will reached, which are indispensable in government. Through just such a mental unity, William of Prussia commands every person and thing in his kingdom. His right of command must be a unity; and to think of what can be maintained, in defiance of his will in his own realm, is to think of what does not divide, but destroys sovereignty; for even if the cap of Gesler can be kept in the market-place, as an emblem, against his will, he is not sovereign, for *an opposing will has risen above his own*, with all infini-

tude to expand in, for domination over what is beneath. The sovereign entity, *i. e.* the mind or soul having the right of command, is the same (with its perception, reason, judgment, and will) in an aristocracy, and a republic, as in a monarchy.

What say the Publicists? — As they all agree, one or two quotations from those of the highest repute will suffice. Vattel says [Book I., § 65]: "Every sovereignty, properly so called, is, in its own nature, one and indivisible." Lieber, in his "Civil Liberty and Self-government" [Ch. XIV.], says: "What, in a philosophical sense, can truly be called sovereignty can never be divided." In his "Political Ethics" [§ 63], he says: "Society can never delegate or pledge away sovereignty;" and that "being inherent naturally and necessarily in the state, it can never pass away from it so long as the latter exists." See also Montesquieu, Locke, Puffendorf, Burlamaqui, Rutherforth, Rousseau, and others.

Enough is now said and quoted to exhibit the mental unity, the moral person, which dwells in one of our societies or states, as its soul, this being sovereign, and acting so continually, through the mental organism and faculties already brought to view.

Any thinking man can see that sovereignty's exercise of its right of government is functional, and involves no change of itself, in place, nature, or right, much less does it divide and conquer itself, committing *felo de se*. The British sovereignty, the Queen and Parliament, remains at home, in its institutional body, while its governmental agents and agencies go all over the world, bearing and executing "powers." Sovereignty is ever with and in the Czar of Russia, while his agents, with "powers," govern throughout the empire. That of Prussia went to oversee the pounding of France with Thor's hammer. But, though its presence may have increased directing intellect and moral force, it made the shot and steel no more deadly. While one set of sovereignty's agents were using its "powers" to kill and conquer abroad, another set were using its "powers" to govern at home. Of course, republican sovereignty must act in the same way, through "powers" given to agents to be executed by them. Said Chancellor Pendleton: "The people are *the fountain of all* power. They must, however, *delegate it to agents*, because . . . they cannot exercise it in person." [III. Ell. Deb. 298.]

Rights and Powers are not Sovereignty. — All difficulties would disappear from this subject, if we would discard the idea that sovereignty is composed of, or can be divided into, rights and powers.

The general notion of the expounders seems to be, that sovereignty is the sum of all rights and powers, — "the embodiment of all powers," to use Mr. A. H. Stephens's expression. They (and he, too, un-

fortunately) confound *it* with the powers which, by delegation and in writing, *it* entrusts to the governmental agency *it* creates. They admit the transfer to be by delegation, but say this is a ceding of a part of sovereignty, and irrevocable. Witness the absurdity. The people cannot govern directly: they can do it only by and through this very process of delegation. Now, supposing all their governing powers, federal or state, to be in exercise, the result of such theory would be as follows: If they put one-third of them in the federal constitution, one-third of their governing power is "irrevocably" gone. The residue of two-thirds being vested in the state governments, by precisely the same process, through state conventions, the people have abdicated all of sovereignty, put an end to the republican form of government (which can only exist where they keep the sovereignty and govern absolutely at all times and in all things), and reduced themselves to allegiant subjects of agencies, which they themselves created and empowered, — the federal one being paramount, imperial!

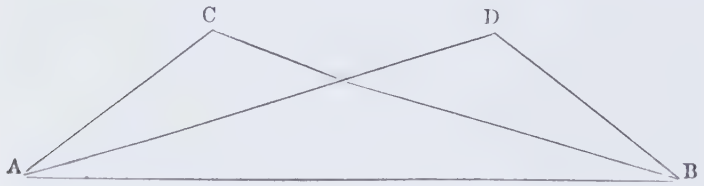
The effectuation of this theory, then, is the annihilation of sovereignty. This is the *reductio ad absurdum;* for sovereignty, whether it is that of a nation or of states, must always be supreme over every person and thing; and, as long as the republic lasts, it must remain in the people as organized, they choosing to politically exist as states, and to govern themselves as such, — separately as to domestic affairs, and conjointly in general and common ones. This is the view of all the fathers.

Sovereignty is not Qualifiable or Limitable. — The dogma that the states have sovereignty, except so far as they have ceded it, if not intended as a deception, is a gross and deplorable blunder; and the following expressions, to be found in the speeches and writings of all American politicians of note, are both amazing and amusing for their solecistic absurdity: "Divided sovereignty," "delegated sovereignty," "qualified sovereignty," "limited sovereignty," "representative sovereignty," "federal sovereignty," "sovereign powers vested in the government," "surrendering essential parts of sovereignty," "dividing sovereignty between the federal and state governments," "the states are sovereign, except so far as they have delegated specific sovereign powers" [Webster], "each state is absolutely sovereign, except as to the limited supreme sovereignty conferred upon the national government" [Story]; and so on, through an immense number and variety of expressions, all absurdly coupling sovereignty with some qualifying word or phrase, or treating of it as susceptible of infinite division, in contempt of the great philologists of the age, who all unite in considering the *word* superlative in signification, and the *entity* referred

to as indivisible and inalienable. [See also the opinions of Judges Taney and McLean, 5 How. 588; 21 How. 516.]

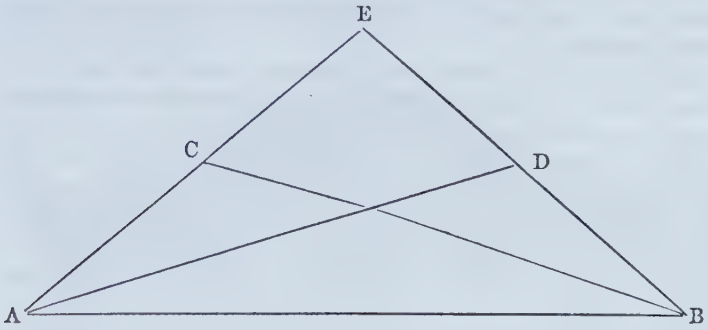
We shall soon see that sovereignty is indivisible, and is not composed of, or identical with, rights or powers. Society's sovereignty must be its supreme will over, and, so to speak, ownership of, all persons and things that are put therein. Like ownership, it involves the right of control and command, as well as, to a certain extent, the *jus disponendi*. Will must be exercised, and must have its mental adjuncts, — perception, reason, and judgment. Can this mental unity be disintegrated, so that a part of the faculties can be alienated, and the rest retained? Can the subject persons and things be partitioned, so that some can be under one supreme will and some under another? Can a citizen yield his obedience to more than one ultimate authority? Common sense answers these questions negatively. Two sovereigns cannot have the same subject. No man can serve two masters. But one paramount authority can exist in any country. In a republic, this must reside in the state. It does so in the united states. New York, Texas, or Illinois is, of right, as absolute as King William or the Grand Turk.

Only one Sovereignty over all Persons and Things. — To illustrate this, let us first draw a line from A to B, to present the domain on which sovereignty is to act, say the area of a state: let C represent the national government, and D the state one. Assuming each to have *sovereignty* (I do not mean mere government, but the original and absolute *right* of government, — the "all-power," which carries right of coercion) over the same territory, as the following figure indicates; inasmuch as they are human, A to B must be a debatable ground, must comprise many points of controversy, and must, finally, become "a field of blood."



Our fathers were guilty of no such folly. They always considered the people, and not the governments, as sovereign. They, like Daniel Webster, said: "Sovereignty in government is unknown in North America." Hence, the diagram is reproduced, and extended as fol-

lows, E representing the people, *i. e.* the sovereignty, the source of all government, and C and D its governing agencies : —



Between the two governments, there can be no conflict that requires the *ultima ratio* to settle the question of sovereignty, for they are both subordinate agents of the people, who themselves have the *jura summi imperii* [Blackstone] in their respective political organizations. Each is employed and paid to exercise its agency over the whole state, just as two servants might be set at work in the same field ; and the said sovereignty can, as to both agencies, assign duties, control, and prevent conflicts. This was the view of the fathers. For example, Madison said, no one dissenting, that "the federal and state governments are, in fact, but different agents and trustees of the people, instituted with different powers" [Fed. 46], the said people "composing thirteen independent sovereignties," and making the constitution in such sovereign capacities. [39 and 40 Fed. ; III. Ell. Deb. 94.] Chancellor Pendleton and Judge Marshall, in the Virginia convention, explained in the same way ; so did Chancellor Livingston and Alexander Hamilton, in New York. [*Supra*, 93, 107, 108.] Both constitutions of government were considered part of the fundamental law of a commonwealth, and the two were characterized as "a great political machine." [Read extract from No. 46 Fed., App. D.]

Sovereignty, then, cannot divide itself. Nothing can be excepted from its jurisdiction. And, especially, it cannot become subject to the coercive authority of its own delegations ; and it is only enemies or perverters that could pretend that the commonwealths, called the united states, have become so subject. If sovereignty can be divided, it can be done in an aristocracy or a monarchy, as well as a republic, for in each and every case it dwells in a unity or "moral person." The king is the state ; the queen and parliament are the state ; the aristocracy is the state ; and the republic is the state. In each there must be a will, a sovereign one, or there is no state.

Sovereignty's Delegations. — It is obvious that the rulers in our system must be "substitutes and agents" of the people, as all the fathers, and all the people, in their constitutions and bills of rights declared them to be.

Massachusetts said, in her first constitution, as she has done in all of them since: "All power residing originally in the people, and being derived from them, the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them."

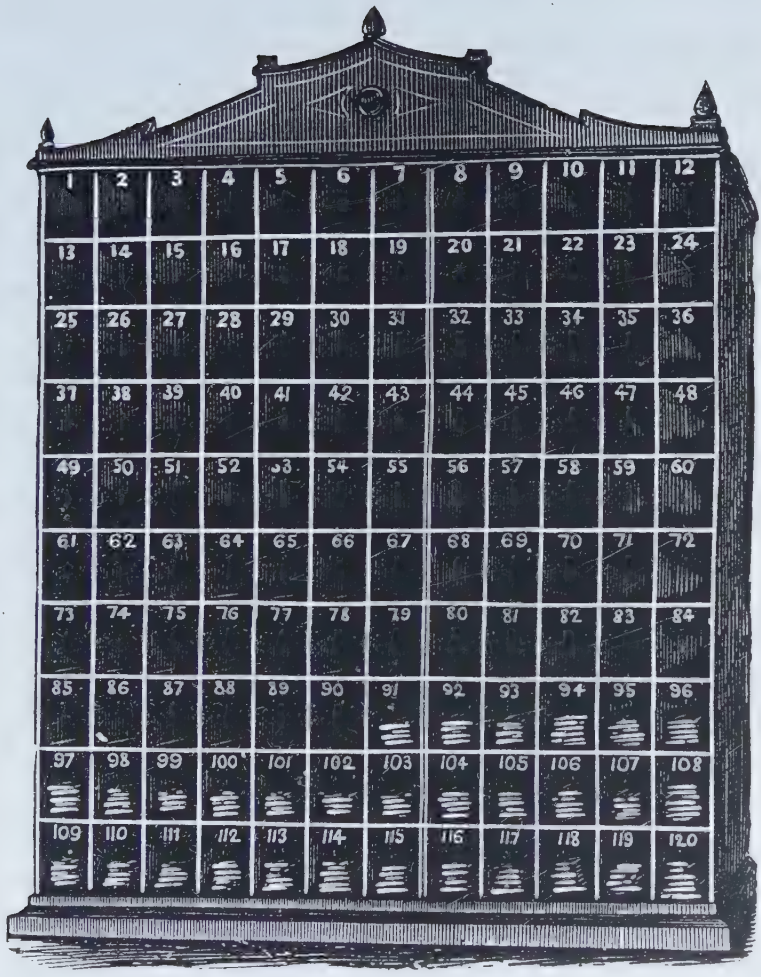
These "substitutes and agents" being and acting in a representative capacity, must, in all their legitimate actions as such, have used "powers" not their own, but belonging to those whose "substitutes and agents" they were, and whose members, citizens, and subjects they must have been, — that is to say, the commonwealths.

Remembering, then, that the commonwealth, *i. e.* the people-government, aimed to govern itself in the most methodical and the safest way, let us suppose that she, by virtue of that sovereignty which all the states agreed that each possessed [First Fed. Const., Art. II.], and with a view to rule through her agents, had caused her powers to be carefully prepared, in written form, by her ablest jurisconsults, and labelled, numbered, and pigeon-holed. The following diagram will present the conception. When the process of constituting government, and endowing it with trusted powers, begins, the repository or treasury is full, and contains 120 formulated "powers."

Now suppose the commonwealth, which thus chooses, to have a treasury of prepared powers, which she may as easily have, as a coffer for her money or a strong-box for her titles, puts in her state government 67 powers; 23 in the agency of herself and sisters for federal government; and retains the rest, — prohibiting the use of all powers not thus entrusted, and exacting an oath of every official to USE and NOT TO USE "powers," just as the said organic law requires. Keep it in mind that every official is a member, a subject, and a chosen agent of a commonwealth. And *every delegated power is an entity*, and a *trusted delegation* of a commonwealth.

The "powers" numbered 1 to 67 inclusive, are trusted to the state governmental agency, thus really forming the state constitution; and those numbered 68 to 90 inclusive, are trusted to the united states, to be administered by their agency; the rest remain in the repository, as indicated by the little figure in each pigeon-hole from 91 to 120 inclusive. [See illustration on opposite page.]

The following corollaries are so plain that he that runs may read: —


1 2 3 4 5 6 7 8 9 10 11 12
13 14 15 16 17 18 19 20 21 22 23 24
25 26 27 28 29 30 31 32 33 34 35 36
37 38 39 40 41 42 43 44 45 46 47 48
49 50 51 52 53 54 55 56 57 58 59 60
61 62 63 64 65 66 67 68 69 70 71 72
73 74 75 76 77 78 79 80 81 82 83 84
85 86 87 88 89 90 91 92 93 94 95 96
97 98 99 100 101 102 103 104 105 106 107 108
109 110 111 112 113 114 115 116 117 118 119 120

1. "Reserved," or "retained" [see Fed. Const. Amendments IX. and X.], necessarily means *kept out of* the constitution and *in* the repository. Hence the absurdity of state rights and powers, not delegated, being reserved in the federal pact; and of "state sovereignty being effectually controlled" thereby.

2. As the same mind creates both agencies, and delegates both sets of powers, conflicts of jurisdiction should seldom occur.

3. If a ruler take a prohibited power from a state's repository, it seems — like theft or burglary — a crime!

4. Moreover, the use, by rulers, of reserved powers is perjured usurpation.

5. The *status* of the commonwealth is not changed by the federal pact, and she has all the authority she ever had, — the only powers out of her, being temporary delegations or trusts.

6. President Lincoln, misled by Story, Webster, and Jackson, was grossly in error in thinking states like counties, with only such *status* and rights as are "*reserved*" to them by the federal constitution.

7. President Jackson was mistaken in thinking that the mere delegation of powers to trustees and agents by a commonwealth, was a transfer of citizenship, and consequently a dissolution of the state; for the citizens are the state, and the state is the citizens.

The investigating and thoughtful reader will find entire support to the above illustration in the following authorities: —

Amendment X. of the constitution declares that "*all powers not delegated* to the united states . . . *are reserved*," etc. — showing, 1st. That no powers but delegated ones are in the instrument. 2d. That the only delegator must be the then sovereign state that was to ratify, and thereby establish. 3d. That there was no delegatee but the united states, and that hence the acting government is an agency. 4th. That all powers and rights not put in the constitution, were kept out — *i. e.* "retained" and "reserved" — as expressed in Amendments IX. and X.

Next read the unanimous letter of the convention to congress, characterizing the whole federal instrument as "the DELEGATING of an extensive TRUST."

Next read Chancellor Pendleton, *supra*, 107; III. Ell. Deb. 298, 299, 301 — the last especially; also Madison, Federalist, 39, 40, 46; and Marshall, III. Elliott's Debates, 227, 233.

Next read Governor Bowdoin and Theophilus Parsons, *supra*, 84.

And, finally, look at the statements of the three greatest of New York's sons, in the light of the following, which she has declared and re-declared from 1776 to this day, and which every true son of New York will defend, and ought to defend, to the death: "*No*

authority can, on any pretence whatsoever, be exercised over the citizens of this state, but such as is, or shall be, derived from, or granted by, the people of this state." [Const. N. Y. Art. I. § 1.]

Read Chancellor Livingston, *supra*, 93; Alexander Hamilton, Federalist, 85; and II. Elliott's Debates, 353 *et seq.*; and John Jay, *supra*, 92.

The sure conclusion of every line of honest and logical thought is, as John Jay expresses it, that the government receives "the part of the people's business entrusted to them, not for themselves, but as the agents and overseers of the people," — the true idea being that the individual sovereign states delegated all the powers granted, *to themselves*, as associate sovereign states, — the latter necessarily administering them through an agency or joint commission of their subjects, chosen by themselves respectively.

Sovereignty owns all the "powers" of government; it governs through mind and by will; it delegates its powers in trust, and for its own use, to its chosen subjects and agents.

The powers it does not delegate, it keeps back; and it is a crime for agents and servants to take and use them.

CHAPTER VI.

ERRONEOUS VIEWS OF SOVEREIGNTY.

AFTER careful reading of the constitution in the light of history, the surprise of reading Story, and the paraphrases of him by Lincoln in 1861, by the Philadelphia convention in 1866, and by the federal supreme court more recently, is only equalled by the pain of seeing their general promulgation, vast following, and ruinous consequences. The confiding masses readily yield assent to misstatements and untruths, if leading men — great or small — constantly string them on a plausible thread of sophistry; while those whose duty it is to find and proclaim the truth, seem to stand in criminal silence or abject discouragement, forgetting the eternally salutary rule of telling the truth, doing justice, and leaving results to God.

It seems absurd to meet by analysis and argument many of the dogmas of consolidation, that really must be examined, and tested by truth, under the very eye of the people, so that misstatements and sophistries, as well as their advocates, can be put under the ban of public reprobation.

The Teaching that the States are mere Counties runs about as follows: "We, the people," as a nation made the constitution. It is "the supreme law of the land," and it "reserves to the states, or to the people," all "powers not delegated to the united states." Hence, the states have no *status* or rights, except what the nation has "reserved to them," in its supreme law. Judge Story puts it as follows: "There is a limited *supreme sovereignty* conferred upon the national government by the constitution of the united states." [Bills of Exchange, § 23.] The Philadelphia convention's claim, that "*the government*" *holds the states under allegiance*, and the federal supreme court's *declaration* that *the said government* "*is supreme and above the states*," have been heretofore stated. The complement of all this treason is, that the right of deciding finally on all disputed jurisdictions belongs to the said government — this, of course, sealing the subjection of state authority and existence. [*Supra*, 160.]

Amazing as this may seem, there are thousands of so-called republicans, and so-called democrats, who actually have minds — shave beards — talk politics, and assume to lead, who stand upon the false doctrine, and say they are "state-rights men"!

Defences Changed to Means of Attack. — The above is really the most pernicious expounding we have, because it bears a semblance to fair exposition, and deludes the people into the idea that their beloved commonwealths are impregnably fortified by the constitution, while in reality that constitution, with its forces, is perverted into an engine of destruction, that will grind them to powder. To use the figure of Fisher Ames, the states are on "the naked beach; and the union is the dyke to fence out the flood." As long as it is admitted that the states are the makers, owners, and controllers of the dyke, it is all right; but the prevailing idea is, that a superior power, with their safety in charge, dyked them in, and can, *by construction*, increase that dyke to the walls of an impregnable fortress, and can at will, and on the plea of necessity, turn its guns inward upon the states! Offence and defence are relative, and walls can be used for protection or restraint! History is full of instances of citadels becoming prisons to the owners, — useful machines proving to be traps, and "engineers hoist with their own petards." At all events, the people, under this treason, are losing liberty!

"The States are Sovereign, except," etc. — Let us now proceed to expose the flagrant error (or mistake) of the "expounders," on this subject. Judge Story, in his Bills of Exchange, § 23, thus sets it forth: "Each state is absolutely sovereign in its political organization and government and dominion, saving and excepting only so far as there is a limited supreme sovereignty conferred upon the national government, by the constitution of the united states."

Webster, in a letter to Baring Brothers & Co., October 16, 1839, said: "Every state is an independent sovereign political community, except in so far as certain powers, which it might otherwise have exercised, have been conferred on a general government, established under a written constitution."

Hon. A. H. Stephens, in his War between the States, vol. i, p. 403, claims that Mr. Webster in the above, and in his argument in the "Bank of Augusta *vs.* Earle" (13 Peters, 599), fully admits that "the states are sovereign, except in so far as they have delegated specific sovereign powers." It is difficult to see how this so-called admission helps Mr. Stephens's argument, or proves a change in Mr. Webster's views between 1833 and 1839. I fancy Mr. Webster might cogently, if not conclusively, reply as follows: "You state my admission correctly. I made it in 1833 as well as 1839; and on the former occasion I

added, as on the latter I implied, that so far as those 'specific sovereign powers' go, 'so far state sovereignty is effectually controlled.' By claiming my admission of your statement, you admit mine. We agree, then, that as to the 'specific sovereign powers,' the states are not sovereign, and that hence 'so far state sovereignty is effectually controlled.'" Should not Mr. Stephens, to escape, change his base, and say he did not mean *sovereign* powers? In truth, there are no such in the constitution — all being subordinate. However, all the writers of the Massachusetts school state the doctrine exactly as Mr. Stephens (inconsistently with his theory) seems to admit the same.

I will present here two more expressions, because of their representative character, and because they show that, as to constitutional views, there is little or no difference between the great parties of the day. George H. Pendleton said in a speech at Bangor, Maine, in 1868: "*The men of* 1787, . . . *committed* to the federal government inter-state and international affairs. All the rest *they reserved* to the states themselves. Within this narrow sphere *they made* the federal government supreme. All beyond remained to the unimpaired sovereignty of the several states." Further along, he calls our system "*a union of states, . . . sovereign, except* in so far as they have delegated the exercise of some powers," etc. Is there any difference between Mr. Pendleton's statement and that of Mr. Stephens? And the New York World agrees with its neighbors, the Tribune and the Times, on this point. Its expression is that the states are "*not sovereign, except* as to their *reserved* rights." By "reserved rights" it means such as are *reserved* to the states in the general constitution.

Do not these expounders all stand upon Lincoln's dogma, that the states of the union are but counties or municipal divisions of a great nation, with no rights at all except what the said constitution *reserves* to them; or Webster's equivalent, that "*the nation*" "*ordained*" "the constitution," "and therein *they* established a distribution of powers between this, *their* general government, and *their* several state governments"? Obviously, the only respect in which Webster and others differ from Lincoln, is that this "expounder" blurts it out that states are counties, while those merely imply — but as certainly mean — the same. Indeed, one of the ablest writers of this school said, in the North British Review for January, 1870, that "the history of state sovereignty ends, and the history of state rights begins, at the federal convention of 1787," — meaning by state rights those provided for and guaranteed in the federal constitution.[1] Practically "the school"

[1] This writer like many — yes, thousands, argued ably on a subject he did not understand — not knowing the facts. Another of his expressions is the following: "The united states constitution started into life, with a full recognition of state sovereignty in

seem to teach, or believe, that the states have no status or rights whatever, independently of the general constitution; and this is, logically, Webster's view of 1833. It should seem inexpressibly absurd to say, that rights and powers "retained," or "reserved," [see Amendments IX. and X.] were not kept out of the constitution, and in the pre-existent states, that ratified and thereby ordained and established it. "Well-known words must be taken in their well-known sense," says Webster.

As this weak and fallacious dogma is the corner-stone — nay, the whole foundation, of the expounding "school," the reader may wish to see it in its most respectable dresses. Let him look, then, at Brownson's American Republic, Draper's Civil War, Cooley's Constitutional Limitations, Greeley's American Conflict, Jameson's Constitutional Convention, Lunt's Origin of the War, Parker's Harvard Lectures of 1865–6, etc.

Delegating is Irrevocably Granting. — With amusing *naïveté*, Mr. George T. Curtis, while declining, in a recent controversy with Mr. A. H. Stephens, to defend Mr. Webster's views on "political sovereignty," sets them forth as follows: "When the states ratified the constitution, they parted with a part of their sovereignty, and yet remained states. . . . The sovereign powers of a people are divisible, so that a portion can be granted irrevocably, and a part retained." [See his letter in N. Y. World, August 23, 1869. See also the World of June 3, 1868.] The reader will please notice here that the "sovereign powers" to be parted with, or reserved, are treated of as identical with "sovereignty."

The above expression may be taken as the views of Dane, Story, Webster, Curtis, G. H. Pendleton, and, in short, of the whole Massachusetts school. They admit, strange to say, that the states, as sovereign political communities, ratified and established the constitution; but they untruly assert (and in doing so disregard history and reason) that the said states thereby excepted out of their sovereignty a national sovereignty which effectually controls them. The very constitution itself, with its "plain tale, puts them down"! What they incorrectly and sophistically call exceptions out of sovereignty, are expressly characterized, by the constitution itself, as *delegated*

the senate, and of national sovereignty in the house of representatives; and the problem, how to harmonize the two, was the legacy of the federal convention to the American people."

Such legacy was never thought of, much less left. The commonwealths of people were to govern themselves, jointly and severally. Having the right to do so from God, they had sovereignty in them. "It never leaves them." [Wilson.] The senators and representatives of a state were the delegation of that state. All those delegations made the congress of the states, which are the sovereignty as to general affairs — a joint sovereignty of commonwealths.

powers. And it contains no powers but delegated ones; these, as the phrase solely means, being confided to agents or representatives, for the use and behoof of the delegators or sovereigns.

Arguing from False Words. — As the constitution contains, and contemplates, no other "powers" than those "delegated," these must necessarily be used by agents or trustees, *i. e.* persons who act for the supreme authority that the said powers belong to. So when the Danes, Storys, Websters, Jacksons, Curtises, Parkers, Brownsons, Drapers, Pendletons, Lincolns, Jamesons, Greeleys, Johnsons, and others, talk and write of "ceding," "transferring," "parting with," "relinquishing," "surrendering" — all in the sense of alienating — sovereignty, and say it is done "irrevocably," while they suppress the real constitutional language, which bears a totally different meaning, they only escape the imputation of ignorance by incurring a worse one; and those of them officially sworn to support and preserve the constitution must, if they escape the former alternative, meet the additional charge of perjury.

It is certain that neither the constitution nor the sacred teachings of the fathers contain any warrant for such a doctrine as the states committing suicide, or as their contemplating any other sovereignty to amend the constitution than that which established it, namely, their own. Hence the immortal Washington wrote, "by unanimous order of the convention," that making the constitution was the "*delegating*" of an "extensive *trust*" — this agreeing strictly with the instrument itself, which expressly and exclusively provides for "powers delegated," and for none whatever that are "*granted* IRREVOCABLY." And hundreds of pages from the fathers could be here quoted, to show the falsity of the idea that sovereignty was transferred at all — let alone "irrevocably," — but not a line in its favor. Nay, more, I will venture to say, that as no man can believe an obvious untruth, the great mind of Webster never believed, and Mr. Curtis does not now believe, that the sovereignty of the people is "divisible, so that a portion can be granted irrevocably, and a part be retained."

Is not this particular expounding now degraded to the rank of a misstatement, and made to appear so absurd that any mere sophist, upon being convicted of it, would rather say, "I aimed to cheat with it," than "I believed it"?

The Fathers never held such dogmas, though they sometimes used the word sovereignty in the sense of government, rather than the right of government. But they nowhere say or hint that the states, as political bodies, are "sovereign, except so far" as they are not sovereign, — this being precisely the idea of all these modern expounders. In those days of political experiment, the fathers were

to be excused for misnomers, for the subject was new to them, and all their political ideas and language came from European sources, where sovereignty is held of original right, and wielded by the visible government, this being monarchical; while in the united states, the government has no original rights and powers whatever, and the sovereignty dwells down in the people always, and is only manifested through "substitutes and agents." Moreover the powers of making war, peace, treaties, coinage, and of taxing, etc., were commonly called "sovereign powers;" and the fathers, to be intelligible, spoke to the people in common parlance, not dreaming that their language would make confusion of ideas, and furnish pretexts for sophistical exposition in the future. At all events, they nowhere hint the idea of Webster, that so far as *the delegated powers* in the constitution go, "so far state sovereignty is effectually controlled."

Politicians, like Sheep, follow a Bell. — It is doubtful if any man ever lived who was capacitated to entertain the idea of a sovereignty delegating a sovereignty, which could rightfully coerce the sovereignty that did the delegating — at least until office-seeking came to be a profession, and facts, falsehoods, sound arguments, sophistries, and frauds, equal cards in all political games. Politicians adopt and follow the doctrines of leaders and conventions, as thoughtlessly as sheep follow bell-wethers. They all start from Story and Webster's dogmas, as from postulates or premises. If they delve at all in the mine of constitutional history, they pass by a thousand proofs of the falsehood of those dogmas, to cull a few seeming evidences of their correctness. They dare not bring out the truth, for although it may "run and be glorified," it runs slowly, and they cannot go into the next generation to run for office on it. Would Seymour have received a vote in the convention of 1868, if he had expressed the views of Washington, Franklin, Hamilton, and Madison? Would George H. Pendleton be thought of for the presidency, if his was the faith of the fathers (for instance, the ideas of Chancellor Pendleton in the Virginia ratifying convention) instead of the Massachusetts school? The modern Pendleton thinks the powers delegated by the states can be used by the subjects of the states, to coerce these bodies into obedience to the said powers. And, *mirabile dictu!* Hon. A. H. Stephens "leaves his own, to stand on foreign ground," and strays into the flock. Let us see. Of course he concedes that all the powers of the federal constitution are to be enforced. Then the "*specific sovereign powers*," he speaks of, are *to be enforced* "*over the authority delegating*" *them so long as they* "*are unresumed*." Hence, Mr. Stephens's own words assert a coercive power in the federal pact over the states. The theory of his book, however, is, or seems to be, the one unanimously held by the fathers, to wit:

that the states were to associate, and conjointly act, in general government, with entire voluntariness, and that this inconsistent and mischievous war-power of coercing states was to be carefully excluded.

Hon. A. H. Stephens and others on Sovereignty. — Mr. Stephens, in his "War between the States," expresses some views utterly inconsistent with his general theory. I purpose now to notice these somewhat, together with kindred views of other most eminent conservative politicians. In Vol. I., pp. 488–9, he says that "sovereignty is the *highest* and *greatest* of all political *powers;* that it is the *source*, as well as the *embodiment*, of all powers;" that it is susceptible of partition and transfer; that "if sovereignty is not parted with by the states, in express terms, . . . it is still retained and *reserved to* the people of the several states, *in that mass of residuary rights*, which was expressly reserved in the constitution itself;" and, finally, that it was "not expressly reserved in the constitution at first," but was "soon after" "expressly reserved" in the Tenth Amendment.

This all means that sovereignty, which must be the peculiar and essential characteristic of a state, — the very one that causes it to differ from a county or a province, which consists of the right of command over everything, and which was supposed to be above all rights and powers, and to have the absolute disposal of them, — is divisible, and subject to grant or reservation; and that, though it might have been parted with, it is actually *reserved to* the states in the Tenth Amendment of the federal constitution, — this being the sole source of, and their only title to, their sovereignty! Moreover, he calls these alleged fractions of sovereignty "specific sovereign powers." All this resembles the doctrines of Dane, Story, Webster, Curtis, G. H. Pendleton, and the New York World, but not those of A. H. Stephens.

The former could say to Mr. Stephens: "As you assert, the sovereignty of the states 'was not expressly *reserved in* the constitution at first,' but was afterwards 'expressly *reserved' in* the Tenth Amendment. Did not the constitution thenceforward provide the practical means of preserving that sovereignty? Did not the guaranty of a republican form of government [Art. IV., § 4], and the amendment in question, aided by other clauses, empower and charge the government to see that the states are protected in their rights as reserved, including this right of sovereignty? As sovereignty is thus placed in and under the constitution, as you admit, it must consist with the 'specific sovereign powers,' which you say are granted in the other parts of the instrument. Do you not, therefore, admit that Mr. Webster is right in his *dictum*, that, 'so far as the constitution goes, so far state sovereignty is effectually controlled'?"

Does not Mr. Stephens, then, seem entangled in the meshes of his own logic, so that his only escape is to admit that the constitution does not involve state, or any other, sovereignty, but that the pact, including the government it provides for, remains, as a created instrumentality, beneath, and subject to, the authority of the states which established it, as the terms of their association? This, indeed, seems to be the general theory of his book.

In order not to do Mr. Stephens injustice, I here quote him at considerable length, using some italics for my purpose: —

". . . One of the main objects in forming the compact, as before stated, and as clearly appears from the instrument itself, was to preserve and perpetuate separate state existence. The guaranty to this effect, from the very words used, implies their sovereignty. There can be no such thing as a perfect state without sovereignty. It certainly is not parted with by any express terms in that instrument. If it be surrendered thereby, it must be by implication only."

He shows that this cannot be, and proceeds: —

"For sovereignty is the *highest* and *greatest* of all political *powers*. It is itself the *source*, as well as *embodiment*, of all political powers, both great and small. All proceed and emanate from it. All the great powers, specifically and expressly delegated in the constitution, such as the power to declare war and make peace, to raise and support armies, to tax and lay excise duties, etc., are themselves but the *incidents* of sovereignty. If this great *embodiment* of all powers was parted with, why were any minor specifications made? Why any enumeration? Was not such specification or enumeration both useless and absurd?

"All the implications are the other way. The bare fact that all the powers parted with by the states were delegated only, as all admit, necessarily implies that *the greater power* delegating still continued to exist.

"If, then, this ultimate, absolute sovereignty did reside with the several states separately, as without question it did, up to the formation of the constitution; and if, in the constitution, sovereignty is not parted with by the states, in express terms; if, as Mr. Webster said in 1839, there is not a word about sovereignty in it, and if, further, this *greatest of all political powers* cannot justly be claimed as an incident to lesser ones, and thereby carried by implication, then, of course, was it not most clearly still retained and reserved to the people of the several states, in that mass of residuary rights, in the language of Mr. Jefferson, which was *expressly reserved* in the constitution itself?

"It is true, it was *not so expressly reserved* in the constitution at first, because it was deemed, as the debates in the federal convention,

as well as the state conventions, clearly show, wholly unnecessary; so general was the understanding that it could not go by inference or implication from anything in the constitution, or, in other words, that it could not be surrendered without express terms to that effect. The general understanding was the universally acknowledged principle in public law, that nothing is held good against sovereignty by implication. But to quiet the apprehensions of Patrick Henry, Samuel Adams, and the conventions of a majority of the states, this *reservation of sovereignty* was soon after put in the constitution, amongst other amendments, in plain and unequivocal language. . . .

"This amendment, which was promptly agreed to by the states, unanimously declared that all *powers not delegated* were *reserved to* the states respectively. *This of course includes, in the reservation, sovereignty, which is the source of all powers, those* DELEGATED AS WELL AS THOSE RESERVED. This reservation, Mr. Samuel Adams said, we have seen in the Massachusetts convention, was consonant with the like reservation in the first articles of confederation." [I. Stephens's War, etc., pp. 488–9.]

Let us stop a moment to analyze and look closely at this statement: —

1st. Of twenty different-sized "political powers," for example, "the *highest* and *greatest*" would be "sovereignty." What would the rest be? If sovereignty be taken away, where is the right to use the rest?

2d. But sovereignty is no power at all, for "it is the *source* of all political powers," — the spring, which remains, while the rill flows out forever. Good figure and true! Mr. Stephens should have stuck to it. Sovereignty is the source of all political powers.

3d. He changes again, however, and says sovereignty *is* powers, *i. e.* "the embodiment of all powers!"

4th. But he changes yet again, and says that even the highest and greatest of them (the same he has just asserted to be sovereignty, as the war-power, the tax-power, etc.), are the mere "*incidents of sovereignty*," and, of course, not sovereignty itself.

5th. He says that as "all the powers parted with by the states were delegated" by sovereignty, it "implies that the *greater power delegating* still continued to exist."

6th. He finally says, citing Mr. Jefferson, that sovereignty was in "a mass of residuary rights, *expressly reserved* in the [original] constitution;" but that, *not being itself expressly reserved*, it was, several years afterwards, *expressly reserved* in the Tenth Amendment, which, we find, simply declares that *all* POWERS *not delegated are reserved.*

The plain truth is, that neither the constitution, nor the tenth or any other amendment, has aught to do with sovereignty, for this entity

is not subject to either delegation or reservation, as has been shown. It dwells permanently in bodies-politic, acting through their organs, in delegating or reserving powers, all that are delegated being put by sovereignty in, and all not delegated being kept by sovereignty out of, the constitution.

Sovereign American Citizens. — Our politicians affect fanciful, attractive, and startling ideas, especially such as flatter the people. Every citizen is a sovereign. Often the idea comes up in a form and place to blush for. For instance, Anson Burlingame, of Massachusetts, claimed in Europe, on the basis of personal sovereignty, the equality of an American citizen with European crowned heads. Governor William Allen, of Ohio, not only seems to think that we have just the number of sovereigns that we have voters, but that they desovereignize themselves at every election. Witness the following, from his speech at Columbus, August 20, 1873: When you elect a representative to congress, "you divest yourselves of your sovereign power, and put it all in the hands of one man." "At six o'clock in the morning, these ten thousand men are the sovereign people." "At six o'clock in the evening," they have completely "*divested themselves*" *of sovereignty*, and "concentrated this tremendous power in the hands of one man." In other words, sovereignty does not dwell fixedly in the people as organized, *i. e.* in the mind and will of the state, but bobs up and down with the successive delegations and withdrawals of power, like the hammers of a piano, or the "merry dancers" of the Aurora Borealis.

Squatter Sovereignty. — Again, General Cass and Judge Douglass, two democratic candidates for the presidency, seemingly ignoring the pre-established sovereignty of the American united societies, the associated commonwealths, over the territory they jointly owned, held that these personal sovereigns could go and associate themselves for self-government on such part of the public domain as they pleased, and, *ipso facto*, become sovereign and exclusive. If nomadic, of course, their lines might rightfully fall in any and all pleasant places they might from time to time wander to and occupy.

The fact that these astute politicians labelled their theory "popular sovereignty," which is precisely the theory of this book, did not make it respectable, or even worthy of refutation. [But see Ch. X. *infra.*]

Only in organization have the people sovereignty, and they are organized and capacitated to act, in political affairs, only as commonwealths or states, as we have seen. As such, they have established a league "between the states," *i. e.* themselves, and at the same time, and in the same instrument, constituted a governmental agency to rule their subjects for them. Their law, whether the "supreme" funda-

mental one, or the state constitution, is the harness or machine in which work these agents, who are selected by the said sovereign people from among their subjects, and commissioned and sent and sworn to do certain written duties, and to abstain from all not written or implied. This is *plain common sense.*

The attentive reader will now see and appreciate the error in the following ascription of sovereignty to persons, by a conservative and able professor of a great college, who seems to fall a little short of the true idea — viz. that our members of states (*i. e.* the "men" that "constitute a state") have a dual capacity, and *govern* only in their collective one. They, as the state, rule, votes being mere instruments of the said state, ordained in her constitution, through which she determines, formulates, and executes her will. The professor says: "The franchise is a prerogative act. It is the act of a sovereign. It is performed without any responsibility whatever, except to one's own judgment and conscience. And furthermore, although we are fond of boasting that every citizen is a sovereign, let us not forget that every one is also a subject."

In conclusion of this chapter, to aid honest reflection, I will present

Some Decisive Definitions. — As Daniel Webster, in his speech of 1833, says that "well-known words" should be taken in their "well-known sense" in expositions of the constitution, I will invite Noah to "come to judgment" and correct Daniel with the "well-known sense" of the leading words herein used. The hundreds of dictionaries in the library of the British Museum all agree with the impartial and decisive judgment (for such it may be considered) of the great American lexicographer. I quote from a genuine edition.

"SOVEREIGNTY, *n.* Supreme power; supremacy; the possession of the highest power, or of uncontrollable power." It is obvious that the word has but one meaning; and that it is a superlative and unqualifiable word. This definition shows all the phrases quoted at the beginning of Chapter V. to be gross errors.

"WILL, *n.* 1. The power of choosing; the faculty or *endowment of the soul,* by which it is capable of choosing; the faculty of selecting or preferring one of two or more objects. 2. The choice which is made; a determination or preference which results from the act or exercise of the power of choice; a volition. 3. The choice or determination of one who has authority; a decree; a command; discretive pleasure." [Webster's Dictionary, ed. 1844.]

In the edition of 1859, under "Will" is the following, which suits my purpose: "The will is directed or influenced by the judgment. The understanding or reason compares different objects which operate as motives; the judgment determines which is preferable, and the

will decides which to pursue. In other words, we *reason* with respect to the value and importance of things: we then *judge* which is to be preferred; and we *will* to take the most valuable. These are but different operations of the mind, soul, or intellectual part of man." [See also Locke, Understanding, B. II. c. 21.]

The error of the writers herein criticised seems to result from their not always keeping it in mind that "will" and "power" are totally different entities; and that "sovereignty" is supremacy of will, while power or powers refer to the faculty or ability of doing, or the authority to do, what effectuates *will*. A paralytic may have will without power, and an idiot power without will. Hence we see that either of the said entities can exist without the other. Legislation is sovereign will in the shape of law, though it is ineffectual without executive power.

"DELEGATION, *n.* A sending away; the act of putting in commission or investing with authority to act for another; the appointment of a delegate. 2. The person deputed to act for another or for others. Thus the representatives of Massachusetts in congress are called the *delegation*, or *whole delegation*."

"DELEGATE, *v. t.* 1. To send away; appropriately, to send on an embassy; to send with power to transact business as a representative. . . . 2. To entrust; to commit; to deliver to another's care and exercise; as, to *delegate* authority or power to an envoy, representative or judge."

POWER. Any and every power in the constitution, being granted or vested by delegation, is necessarily "an authority which enables one person [or a set of persons] to do an act for another." [See note, p. 302, *supra*.]

Here then is the plain teaching — "the well-known sense" — of these important words: 1. *The sovereign mind* (whether residing in a monarch, an aristocracy, or a state), in governing *wills*. 2. *Powers* are, by it, delegated to agencies to effectuate its *will*. 3. All the *powers* of the constitution of the united states are *delegated*, and are so many specific authorizations to "substitutes and agents" to carry out sovereign *will*. Such will must ever reside in the people as states, for only thus did they ever organize themselves. Republican sovereignty cannot be in constitutions or governments, not only because it must be in the people, who have ever the right of government, but because the so-called governments are, *by the people, created and endowed* with "delegated" authority, and are administered by the people's *representatives*, who must be members and citizens, and, necessarily, subjects of states.

CHAPTER VII.

THE UNITED STATES ARE SOVEREIGNS YET.

IN every step of progress hitherto, we have seen that "the united states," and "the people of the united states," are identical, the people being named in the instrument constituting the federal government, and delegating to it the powers it is to exercise, as New Hampshire, Massachusetts, New York, Pennsylvania, Virginia, and others; being provided for throughout the said instrument as such states; and being recognized, in the seventh and last article, solely in the character of states, and as exclusively ratifying, and thereby ordaining and establishing, the constitution, and giving the only life and authority thereto.

And we have seen that, in all their contemporaneous explanations, the leading fathers asserted, *nem. con.*, that the bodies of people called states were "the parties to the compact," [Hamilton, Fed. 85], and were in the *status* and character of sovereigns [Part I. Ch. VII.]. No change in the said states was ever intended or thought of; for they were considered to be, as Hamilton said, the "essential component parts of the system," the destruction of which would be "political suicide." These are his own remarkable expressions.

We have seen that each body had a mind; that government is essentially mental and functional action; that no nation, or national society, could supplant the states, because *forming government* for preformed society, and not *forming society* itself, was the subject of action in 1787; that the sovereign wills that ordained the constitution had to subsist through the *making*, and afterwards, to secure the obedience of their subjects thereto; and, finally, that their continuance in sovereign individuality, throughout the duration of the pact, is necessitated by article V., in which it was agreed by "the parties to the compact" that "three fourths of the *several* states" shall, by "*ratification*" of amendments proposed in proper form, amend the constitution.

The People, as States, have always amended. — And accordingly, throughout their federal history, and in pursuance of their

federal agreement, the states have amended their constitution, when they thought "the common defence" and "general welfare" were not well enough "provided for" and "promoted." This power of amendment or change is the power of abolition or repeal; and it shows the states, *i. e.* the *collective* people, to be above their federal "supreme law."

A cursory view of the early, as well as the later, amendments will corroborate fully the view here taken, and settle forever, in any thoughtful reader's mind, the supremacy of the states, whether united or single, over the tripartite agency constituted by them to do their federal business.

The First Twelve Amendments. — Before 1865, twelve amendments had been adopted by the *states*, and added to their constitution, according to the mode agreed on in article V., just cited. This power of amendment, alone, shows that the states are supreme above the constitution and the federal government; and that they are not in allegiance, but only bound by self-imposed obligations.

Following the lead of Massachusetts, all the principal states, when they ratified, insisted upon amendments; the main one referring to the reservation of all powers not delegated.

Congress, acting as the agent of the associated states, took early action, and proposed to each state, for her adoption or rejection, the first ten of the amendments. Here is the record; the italics are mine: —

"Congress of the United *States*, begun and held at the city of New York, March 4th, 1789.

"The conventions of a number of the *states*, having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction, or abuse of its powers, that further declaratory and restrictive clauses should be added; and, as extending the ground of public confidence in the government will best ensure the beneficent ends of its institution, —

"Resolved, . . . that the following articles be proposed to the legislatures of the several *states*, as amendments to the constitution of the united *states*; all or any of which articles, when *ratified* by three fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution."

Adoption by Separate States. — The said ten amendments were *ratified* as follows by the states, viz.: By New Jersey, Nov. 20, 1789; by Maryland, Dec. 17, 1789; by North Carolina, Dec. 22, 1789; by South Carolina, Jan. 19, 1790; by New Hampshire, Jan. 25, 1790; by Delaware, Jan. 28, 1790; by Pennsylvania, March 10, 1790; by New York, March 10, 1790; by Rhode Island, June 15,

1790; by Vermont, Nov. 3, 1791; by Virginia, Dec. 15, 1791. The following is the introduction of the said ten articles, as promulgated by congress: "Articles in addition to, and amendment of the constitution of the United *States* of America, proposed by congress, and ratified by the legislatures of the several *states*, pursuant to the fifth article of the original constitution."

In 1798 and 1804, the eleventh and twelfth amendments were established; the former being the last of several most studied and careful endeavors to prevent the states from being subordinated and subject to coercion. [Amendments IX., X., and XI.]

The Later Amendments. — About seventy years after the first ten were adopted, viz. after the war "between the states," "the people of the united states" again amended, adding the XIII., XIV., and XV.; and doing it in the mode prescribed by their aforesaid article V.[1]

[1] AMENDMENT OF 1865.

Article XIII., section 1. — Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the united states, or any place subject to their jurisdiction.

Section 2. — Congress shall have power to enforce this article, by appropriate legislation.

AMENDMENT OF 1868.

Article XIV., section 1. — All persons born or naturalized in the united states, and subject to the jurisdiction thereof, are citizens of the united states, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.

Section 2. — Provides for apportionment of representatives, and for a reduction of them in proportion to the numerical reduction of voters.

Section 3. — Disqualifies for federal office those who have taken federal oath, and afterwards aided rebellion. But congress, by two-thirds vote, may remove disability.

Section 4. — Provides that the validity of the war debt shall not be questioned. But neither the united states, nor any state, shall assume the rebel debt, or pay for the loss of slaves.

Section 5. — The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT OF 1870.

Article XV., section 1. — The rights of citizens of the united states to vote shall not be denied or abridged by the united states, or by any state, on account of race, color, or previous condition of servitude.

Section 2. — The congress shall have power to enforce this article by appropriate legislation.

Though the stating of facts, and not commentary, is here my object, I must say, *en passant*, that these amendments simply extend civil jurisdiction, and are to be enforced by the usual civil, and not by military, coercion; the latter being usable in the state, against "domestic violence," only on call of the legislature thereof, or, when it "cannot be convened," "of the executive." Outside of this narrow and to-be-strictly-construed basis, even a Washington would have been perjured, if he had sent coercing federal soldiers to Pennsylvania, whether he acted before or after the amendment.

So that we find that the states named in the pact, and those they have associated with them, have ratified and ordained the constitution, and all the amendments thereof, from the beginning to the present day; and that, in so doing, they have acted functionally in self-government, with their respective minds and wills. In other words, the constitution, the amendments thereof, and all the authorities thereunder, are the offspring of the wills of the states.

The conquerors could have dictated amendments, and even provincialized or dissolved states; but they chose to accept the submission of the seceders, and receive them into the same old association of equal commonwealths, where each has the solemn, sacred, and sworn guaranty of all, that she shall have "a republican [and not a provincial or municipal] form of government"; or, in other words, that she shall be a republican commonwealth, or self-governing people in all respects.

We see, then, that the people pre-existed as states; they were recognized and provided for in the pact as states; they ratified and ordained as states; they have always amended as states; and they now exist as states, the self-same political entities that convened in 1787 to plan the constitution, and that subsequently ratified and ordained the same by their respective conventions, according to article VII.

When and how did a State lose Sovereignty? — Of course Mr. George Ticknor Curtis, the most respectable of the "school" under review, and the representative of Story and Webster, can tell when the states ceased to be such, and became provinces, departments, or counties of a nation.

He has a chance now to settle the great American question forever.

He admits fully that the states were respectively sovereign and absolute, before the present federal constitution was formed. Let us substantiate this admission at the outset. In quoting from him the italics are mainly mine.

"When the revolution was fairly accomplished," said he, the "state [of Rhode Island] assumed its position of *absolute sovereignty*." [II. Hist. Const. 599.]

Again — "The meeting of the states [to form a constitution] was purely voluntary: they met as equals, and they were sovereign political communities, whom no power could rightfully coerce into a change of their condition; and with whom such a change must be the result of their own free and intelligent choice." [Ibid.]

"The source of fundamental law is found in the sovereign authority of the people of a distinct state, to order the political conditions

of society. It cannot be doubted but this is the very highest of all human authority."[1] [His letter to N. Y. World, 1869.]

"The relations of the individual to the political society of which he is a member; . . . came into existence as soon as a sovereign American state was formed out of a revolted British colony." [Ibid.]

Enough: these strokes of his potent pen quash forever his *magnum opus* — "the History of the Constitution." They exactly contradict that book, and fully sustain this. His admissions derive additional force, not only from his ability and opportunity for knowledge, but from his being the disciple of Story and Webster; from his representing the "school" as their historiographer; and, finally, from his most conspicuous wish to discover, under the present federal polity, some evidence of the revolutionizing of the republics into one grand state — some sign of sovereignty out of the states, and in a nation comprising them. And his fatal admissions fully accord with the treaty declaration of the first federal instrument — "each state retains its sovereignty"; with each state's own claim of equal sovereignty from the beginning to the present; with the acknowledgment of George III., made at the instance of the states' commissioners, of the sovereignty of each by name; and with the unquestionable independence, sovereignty, and freedom of will, with which the states ordained the constitution, and acted under it thereafter.

A few words more as to Mr. Curtis's admissions will be aidful. To cap the climax of self-stultification, as it were, he quotes, with high approval, the language of Judge Wilson in the ratifying convention of Pennsylvania, that "it has been incontrovertible since the revolution, that *the supreme, absolute, and uncontrollable power is in the people*, before they make a constitution, and *remains in them* after it is made." Furthermore, he states it as the "American doctrine," "that *all supreme power resides originally in the people;* and that all governments are constituted by them to be *the depositaries and agents* of that power" — so far, of course, as the people choose to impart it. "And," continues he, "the people can withdraw at their pleasure" the power "deposited with a state government," and "vest it in another class of agents [the federal ones], leaving the authority of the former undiminished, except as to the particular objects of the powers withdrawn."

Now, let us come down to, and consider, the single point of a

[1] Mr. C. repeats that "we can go to nothing that is higher [than state authority], and at the same time human." But he proceeds then to develop the idea of a second society being formed, supplanting, or rather absorbing, the first; and of a government dominating the states that created it; but he only succeeds in making his fallacy more and more conspicuous as he proceeds.

state's losing, being divested of, or alienating sovereignty; and, for use in illustration, let us make a row of symbolical figures, to represent a given state (say Rhode Island) at the different dates indicated, — each figure with a star in it, to represent sovereign will, as follows: —

1776 1786 1796 1806 1816 1826 1836 1846 1856 1866 1876

Of course, so stupendous a change as desovereignizing a state, and making a subjugated province or county of it, must be marked by more or less of easily citable facts of history, or documents; and Mr. Curtis, whose researches have been most extensive, should be asked for, and required to point out, the evidences of such change, so that we can admit or controvert such momentous averment. Let us know the precise time when the name, geography, people, organism, or inherent political authority of any given commonwealth underwent that essential and radical change of state to province or county, and from sovereignty to subordination, which he teaches in his works.

At what epoch should the star be left out of the above illustration? Let us have the facts proving the change, so that they can be examined.

Admissions of Everett, J. Q. Adams, and Webster. — These other most distinguished sons of Massachusetts, who at times perverted her faith and endangered her statehood, also prove by forceful admissions alike their amusing and confusing inconsistency, and the doctrine of this book.

Edward Everett wrote to Jefferson, in 1826, that "the constitution of the united states is a compact of independent nations" — this being also the view of Jefferson. [J.'s Works, Vol. VII.] To Washington Hunt he wrote, on May 29, 1860: "Our union of coequal sovereign states requires, as its basis, the harmony of its members, and their voluntary co-operation in its organic functions."

John Quincy Adams said, in his discourse on the constitution, delivered in 1839: "To the people alone is there reserved as well the dissolving as the constituent powers, . . . and the people of each state . . . have the right to secede from the confederated union."

Daniel Webster, as heretofore shown (p. 212), called our union "the American confederacy," said that it was voluntary, and that "the only parties to the constitution contemplated by it originally

were the thirteen confederated states," and declared that the individual states had "the exclusive possession of sovereignty." And, in Annapolis in 1852, just before his death, he said, as to the states, that "it never entered into their conceptions that they were to consolidate themselves into one government, that they were to cease to be Maryland and Virginia, Massachusetts and Carolina. . . . The objects of the common defence and the general welfare, and afterwards the objects connected with commerce and revenue, . . . were all they adopted as principles and objects of union and association, nothing beyond that. . . . Gentlemen, *I hope*, for one, *never to see the original idea departed from.*"

William H. Seward, at Cleveland, in 1844, said: "This union must be a voluntary one, and not compulsory. A union upheld by force would be a despotism." Twenty-one years thereafter, viz. October 20, 1865, in a most elaborate address on the then condition of things, and speaking in direct reference to possible claims of change in our system by the war or otherwise, he said: "This absolute existence of the states, which constitute the republic, is the most palpable of all the facts which the American statesman has to deal with. . . . In a practical sense, at least, the states *were* before the American union *was*. . . . Our federal republic exists, and henceforth and forever must exist, through . . . the combination of these several free, self-existing, stubborn states. . . . They are living, growing, majestic trees, whose roots are widely spread and interlaced within the soil, and whose shade covers the earth."

And even the Philadelphia Convention of 1866 admitted that no change of the constitution of the government, or of the character and authority of the states, had been made by the war; as did the centennial orator, William M. Evarts, in his address at Philadelphia, July 4, 1876.

Sophists always stultify Themselves. — So it is with all the leading consolidation advocates. Truth's wand, like Ithuriel's spear, makes each in turn helpless and pitiable, — the paralysis being sent down his spinal marrow by his own hand and pen.[1] All sophists must, at times, impulsively tell truths, despite their habitudes of art and craft. Truth and honesty are natural, and they often "out," while deceit and fraud are asleep, or "off watch."

The above expressions of the sophists precisely accord with the history and records of the country, and with the fathers, as cited in Part I., Ch. VII.

[1] "Him thus intent, Ithuriel with his spear
Touched lightly, for no falsehood can endure
Touch of celestial temper; but returns
Of force to its own likeness."

The Political Philosophers. — The two greatest of the age speak as follows: —

Lord Brougham says: "It is plainly impossible to consider the constitution" as anything "other than a treaty" forming a "federacy of states."

De Tocqueville says the union is a "voluntary agreement of the states," which have respectively not "forfeited their nationality," and become "one and the same people."

John Stuart Mill writes of it in the same way.

Vattel and Montesquieu forecasted our polity as follows: —

Said the former: "Several sovereign and independent states may unite themselves together by a perpetual confederacy, without each in particular ceasing to be a perfect state. They will form together a federal republic." "The sovereignty of each member," continues he, "is preserved," though there is "constraint on the exercise of it, in virtue of voluntary engagements," *i. e.* the members bind themselves to voluntary functions in the union.

Said the latter, describing what he calls the "confederate republic," or the "republic of republics": This is "a convention [*i. e.* a coming together], by which several small states agree to become members of a larger one, which they intend to form. It is an assemblage of societies that constitute a new one [which is his 'republic of republics'], capable of increasing by new associations. . . . The confederacy may be dissolved and the confederates preserve their sovereignty." He further remarks that, "as this government is composed of small republics, it enjoys the internal happiness of each," while by "the association," it has "all the advantages of large monarchies."

Issues of Fact tendered. — Passing by the facts that the bodies of people were called states in 1776 and 1787, in the then meaning of the word, and in the same sense as Spain and France were, and that sovereignty was that which alone distinguished them from provinces or counties; passing by, too, the fact that these bodies were not created, or provided for, by any law or constitution, as are counties or other subdivisions of a state, but that each pre-existed as an organized political being, absolutely without a superior on earth, and the peer of every other state, and hence sovereign; passing by, finally, the fact that each was declared and guaranteed by all to be sovereign, and was acting as a sovereign, throughout the framing and ordaining of the constitution in 1787–90, let us respectfully, but defiantly, tender decisive issues, and throw down the gage. If the pros are truths, must not the cons be falsehoods?

1. The people of the united states politically exist, and are capable of political action, only as republican commonwealths called states.

2. Each state is a distinct and independent body of people, with its own name, inhabitants, geography, and political organism, and is as separate and complete in existence as a man, an island, or a star.

3. Each of these commonwealths has a mind, which it exercises in all acts of government, and it gathers information, reasons, judges, and wills, as to defence and welfare, just as a man does.

4. The action of this mind, in constituting and administering government, is functional, just as the self-governing action of a man's mind is.

5. Hence, as separate minds cannot unite by welding themselves, but must associate and co-operate, the union of states called "the united states" is necessarily a federation or league of states.

The denial of these propositions is untruth. The "moral persons" do yet exist intact, and their continued existence is essential to the continuance of American institutional liberty.

"Free, Sovereign, and Independent." — This phrase, so often used unqualifiedly in our history, as to the *status* of a commonwealth [*e. g.* in the constitution of Massachusetts; first federal constitution; treaty of 1783; act of Virginia, ceding northwestern territory; ordinance of 1787 as to same; several state constitutions], means that she is "*free*" in mind, to think and determine as she pleases; "*sovereign*" in will, and beyond all earthly control; and "*independent*" in organism and existence; so that, without coercion, any other union or association than a voluntary one is a moral and political impossibility.

Nay, more, the word "state," as we have seen, means, when applied by the fathers and the constitution to New York or Delaware, precisely what it does when it refers to England or France. "When the constitution uses well-known words," says Webster, it uses them "in their well-known sense." [See Constitution, Art. III., § 2; Amendment XI.]

The States not under Control of the Government. — They alone have inherent and original right of existence and authority. The institution called "the government" has no right of control over them, because it springs from their will, and has only the authority they delegate; besides that, it is personally composed of their subjects, and must use their own men and means to execute coercion upon them.

As heretofore quoted (p. 37), Daniel Webster declared that, in North America, sovereignty is ever in the people, and never in the government. And George T. Curtis says: "The American doctrine is, that all supreme power resides originally in the people, and that

all governments are the depositaries and agents of that power." [Hist. Constitution.]

But "Change" by Usurpation threatens us. — I submit, in conclusion of this chapter, that the "change" so persistently asserted by Story, Webster, and the federal supreme court, from a federation to another system, neither was nor could be made; but that, through perversion, fraud, and perjured usurpation, the factitious and fraudulent change is coming over us, that Burke, as heretofore quoted, speaks of — a "change from *a state of procuration and delegation* to a course of *acting as from original power, the very way*," continues he, "*in which all the free magistracies of the world* HAVE BEEN PERVERTED FROM THEIR PURPOSES"!

CHAPTER VIII.

THE STATES ACT AS SOVEREIGNS IN THE UNION.

JUDGING from New York's declarations and action, under our federal polity, she may well be called, in a second sense, "the empire state"; for surely no power of earth did ever more imperially assert herself, or act with more absolute sovereignty, than she has done in the federal union. Indeed, her whole history and record, and all her action — as will be seen — consist with and support the doctrine of this book.

I have already illustrated, in the case of Pennsylvania [see ch. I. of this Part], the transition from colonial or provincial dependence to statehood; and shown that it is precisely the acquisition of "freedom, sovereignty, and independence," that distinguishes a state from a province or other dependency.

New York's Record on the Subject. — She had been an organized society, governed with entire separateness from every other, for over one hundred years, when she established her first constitution, in the year 1777. She then held a convention for this purpose exclusively elected and empowered by herself. Asserting and acting with supreme authority, she then declared herself to be the supplanter of the whole British sovereignty — king, lords, and commons. That constitution — after recounting the steps towards sundering the ties of New York to Britain — introduces the declaration of independence as part of her fundamental law. In that declaration, her delegates, and those of her sisters in congress assembled, declared that their thirteen constituents are of right "free and independent states"; are absolved from all political connection with, and allegiance to, the British crown; and "have full power," as "free and independent states, to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do." This could be predicated of each state only, because there could be no mind to do such things except in the "moral persons" then existent, and by name designated. We must keep it in view, that all affirmations in the history and records of these matters

refers to certain entities — political bodies — "moral persons," that then included all the people and covered all the territory, leaving thereout no powers, people, or acres, to make a nation of; and that these bodies, which have existed through all our history, do exist now, as distinct as trees in a grove, islands in the sea, stars in a group, or men in a corporation. These ideas once held, we require proof of the end or change of such entities. The *onus* is on the "school."

Here is the proper place to brand a certain falsehood, nowadays commonly taught, viz., that the understanding was, that the nascent states were to be "sovereign, free, and independent" only as united states, — each and all the states being subordinate to The United States, or the nation. If such understanding ever existed, it would have been done away with by the second article of the confederation of 1778, declaring that "each state retained its sovereignty." But it is entirely false, as New York herself shows, in the following continuation of the said instrument: —

"And whereas, having taken this declaration [of independence] into their most serious consideration, [they] did, on the 9th day of July last past, unanimously resolve, that the reasons assigned by the continental congress for declaring the united colonies *free and independent states*, are cogent and conclusive, and that while we lament the cruel necessity, . . . we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it. By virtue of which several acts, declarations, and proceedings, mentioned and contained in the afore-recited resolves of the general congress of the united American states, and of the congresses or conventions of this state, *all power whatever* therein [*i. e.* in the state] hath reverted to the people thereof [*i. e.* of the state], and this convention hath by their suffrages and free choice been appointed, and, among other things, authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state. . . .

"1st. This convention, therefore, in the name and *by the authority of the good people of this state*, doth ordain, determine, and declare: That no authority shall, on any pretence whatever, be exercised over the people or members of this state, but such as shall be *derived from or granted by them*."

"All powers whatever" "reverted to the people" of New York! and "no authority," "on any pretence whatever," was to "be exercised over the people or members of this state," but their own![1]

[1] President Lincoln — misled by New York and Massachusetts expounders — said the union made New York a state, and that she had no *status* or rights whatever, except what the national constitution reserved to her. Professor Jameson of Chicago may

New York now Sovereign. — We shall now see that New York retains this very self-assertion in full force to-day, and holds herself to be the absolute sovereign, who gives the federal agency its sole existence and authority on her domain, and uses it and its means as her instruments, and for her purposes; and that the said government has no right to exist, no right to act, no jurisdiction or control over citizens, and no right to hold, administer, or use property — even for federal purposes — without the sovereign authority, the grant, and the permission of that state, and subject to her conditions and her defeasance.

Through her deputized subjects in *federal* convention, *she* assisted in devising the federal compact. In her own home convention she carefully examined it, asking herself if it was to *her* interest, safety, and welfare to adopt it; and finally, after due deliberation, *her* judgment barely inclined *her* will to make it her "supreme law," and to command her "members" (*i. e.* her citizens and subjects) to obey it. Barely, I say, for the majority in her convention was only three, after a long and excited contest.

Her ordaining words were as follows: "We, the delegates, . . . in the name and behalf of the people of the state of New York, do by these presents assent to and ratify the said constitution."

Hereby the only vitality and validity the said compact ever had, or could have, in the state of New York, was given. Thenceforward, her subjects were to obey the federal agency by her command; for standing then in her imperial law was the declaration, that "no authority" but her own was to "be exercised over" her "people or members," "on any pretence whatever."

What say Jay, Hamilton and Livingston? — These greatest sons of New York were most influential in causing her to federalize herself. They probably knew as much of the character of the proposed system, and the intent of New York, as any of her later "expounders" and so-called "historians."

Jay said "a union of states" was being formed, and that the federal functionaries were "agents and overseers of the people." [1]

have taught him — or *vice versa*. The said professor also teaches, that in making their constitutions, and governing themselves, the states perform for the nation, and under its authority, delegative functions: and it is more than intimated by some, and perhaps by himself, that they have done so from the beginning. It is a waste of time, however, even to notice such contentions. He and Professor Mansfield of Cincinnati more than intimate that states are unnecessary except in the capacity of counties.

[1] Contrast, now, these views of the first Chief Justice and his compatriots with those of the present Chief Justice, who dares to say of the same constitution, in the very capital of his leagued sovereigns, that he and the other federal *ephemera* (his co-agents and co-servants) are supreme over the said sovereigns, *i. e.* over the states as states — in consonance with the treasonable declaration of the Philadelphia convention of 1866, that the government has absolute supremacy" over allegiant states.

HAMILTON said the union was "a confederacy," the constitution a "compact," the states the "parties to the compact," and "the people of this state [New York] the sovereigns of it." And CHANCELLOR LIVINGSTON said the constitution provides for "a league of states," thus forming a "federal republic" — the very idea of Montesquieu, heretofore referred to. For a more extended citation of Jay and others see *supra*, p. 92, *et seq.*

No dissent is anywhere found. Her greatest men asserted her and her sisters to be "a confederacy" of sovereigns — a league of states — each the highest authority on earth. They considered the constitution to be the breath of the said monarchs, and "the government" their creation, agent, and servitor. How could it be otherwise when these sovereigns *created* its existence, "*delegated*" to it all of its "powers," and *chose and commissioned* their members and subjects to administer it? In the nature of things, their union, as associated bodies or "united states," was impossible except by *federation*. The "moral persons," each with her will, must act, and *must survive the act.*

She now Claims Sovereignty over People and Soil. — After declaring her boundaries in her constitution, New York says: "The sovereignty and jurisdiction of this state extend to all places within the boundaries thereof, as declared in the preceding title; but the extent of such jurisdiction over places that have been or may be ceded to the United States shall be qualified by the terms of such cession." [See present constn. of N. Y.]

She also declares it to be "the duty of the governor and of all subordinate officers of the state, to maintain and defend its sovereignty and jurisdiction." [I. N. Y. Rev. Stat. chap. i., tit. 2. §§ 1, 2.]

She also declares, in as autocratic a manner as Kaiser William could possibly do, — declaring to-day what she declared at first, — that "no authority can, on any pretence whatever, be exercised over the citizens of this state, but such as is, or shall be, derived from, and granted by, the people of this state." [Ibid. ch. iv. §1.]

Mark the words, "citizens of this state"; and to show how completely this harmonizes with the federal constitution, and agrees with the theory of this work, see articles III. § 2, IV. § 2, and amendment XI. of the federal pact; and article I. § 1 of her own constitution, ordained in 1846 — the latter reading as follows: "No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

Note that she calls "the people" the "members of this state" (just as the federal pact calls "the people" the "citizens of different states"), assumes to be their sovereign, and to be obliged to protect

their liberty and rights. "The people" are New York, *i. e.* a commonwealth so named, which is formed by social compact, wherein each member agrees to be governed by all. Precisely thus does Massachusetts set forth this republican social compact (see the preamble to her constitution); and, consistently, she calls her citizens "subjects of the commonwealth." And even the federal supreme court recently declared (in the Cruikshank case, 1876), that "citizens are members of the political community to which they belong." Hence, under the concurrent declarations of Queens New York and Massachusetts, to say nothing of the united sovereigns and their supreme court, we may consider "member," "citizen," and "subject" as convertible terms; also, that the only allegiance of the citizen is due to the society of which he is an integral part; also, that the only tie of allegiance in "the united states" is the social compact, especially as no king, prince or feudal lord can be found there. At all events, government in republics, being created, delegative, and vicarious, and being administered solely by citizens and subjects of the sovereigns, it cannot possibly be the object of allegiance or treason, as will be duly and more lucidly shown. Treason is a crime against the state or the states.

Uncle Sam stands in New York only on her Grant. — Seeing the pronounced absolutism of New York, we cannot be surprised to find the federal agency under her queenly thumb. Indeed, she never seems to tire of reminding that agency, that it is the "business" of her and her sisters that is done, and that those who "receive that business to manage" do it (as Jay above says), "not for themselves, but as the agents and overseers of the people."

Nay, more, she over and over again declares or implies — as we shall see — that the said limited agency, calling itself "the government," can have no foothold or jurisdiction on her soil, except with her permission, and on her conditions. Greek and Roman proprietors, if leagued for joint government, and protection of their estates and families, could not have had a more masterly and owner-like control over their owned administrators, than these associated moral persons called the states have over their administering and managing subjects. And it is preposterous to suppose that these agents, who are appointed by the state for her purposes, who have only her powers, and are her subjects, should, against her consent, and for some outside authority enter of right on her soil, occupy her strong positions, and gain all points of vantage, so as to be able to encompass her *attack* and *destruction*, instead of her "*defence* and *safety*."

New York on the Lordship of the Soil. — She considers that all rights and powers spring from the commonwealth, and fall thereto

when they lapse. As to the soil, she says in Article I. § 2, of her present constitution: "The people of this state, in their right of sovereignty, are deemed to possess the *original* and *ultimate* property in and to all lands within the jurisdiction of this state; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the people."

Virginia in her constitution expresses it as follows: "All escheats, penalties and forfeitures, heretofore going to the king, shall go to the commonwealth."

Judge Kent thus states the American and republican idea, in IV. Com. 424: "The state steps in place of the feudal lord, by virtue of its sovereignty, as the *original* and *ultimate* proprietor of all the lands within its jurisdiction."

So we see that New York *now* considers *herself* as having upon her soil displaced the former sovereignty, that of Britain. And, consistently, *she* declares that "all grants of land and charters of incorporation made by the king of Great Britain, or by his authority, after October 14, 1775, shall be null and void." [Const. N. Y.]

The Conditions Federal Foothold is Granted on. — It will now be seen that the foothold of the federal agency in New York is held under her grant, and solely on the conditions she imposes. Nay, more, the said agency accepts those conditions, in behalf of its principals, the united states.

On this point, please note, in the first place, the clause of Art. I., § 8, of the federal pact, providing that the congress shall legislate over such ten-mile-square district as shall be "*ceded by a particular state*," and accepted by congress, for the seat of the government; and shall "exercise like authority over all places *purchased by the consent of the legislature of the state*, in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;" note also the act of congress of March 20, 1794, § 3: "It shall be lawful for the president of the united states to receive from any state (in behalf of the united states) a cession of the lands on which any of the fortifications aforesaid . . . may be erected," etc. This referred to sites of forts, arsenals, etc., generally.

The action of New York in the matter is shown in one hundred and fifty-seven, or more, different acts, to be found in the revised statutes of 1859, in which she granted to the united states, as to any other owner, as many different tracts of land, under conditions which she, as a sovereign grantor, imposes, and which are in every case accepted. The following, which is in the act ceding the use and jurisdiction of lands adjoining the Brooklyn navy-yard, is a fair specimen: "The united states are to retain such use and jurisdiction so long as said tract

shall be applied to the defence and safety of the city and port of New York, and no longer." "But the jurisdiction hereby ceded, and the exemption from taxation herein granted, shall continue, in respect to said property, and to each portion thereof, so long as the same shall remain the property of the united states, and be used for the purpose aforesaid, and no longer."

So with the federal "jurisdiction over . . . a tract in the town of Watervliet," the site of the great arsenal: "*The united states are to retain such jurisdiction so long as the said tract shall be applied to the use of providing* FOR THE DEFENCE AND SAFETY OF THE SAID STATE, *and no longer.*"

Further quotation is unnecessary. It is hoped the reader will refer to and read some of the one hundred and fifty-seven statutes aforesaid.

New York, then, is Absolute on her Soil. — It is certain, then, that as the United States is a party to these proceedings, declarations, and grants made by New York, long after the present federal constitution was established, never objecting or protesting, but accepting the conditions, there has never been the slightest abatement of the sovereignty of that commonwealth; and that the united states enters upon her soil solely by virtue of her authority, with her permission, and for the exclusive purpose of promoting her defence and safety. And New York receives the united states in two capacities: First, as a simple property-holder on the same footing with other owners; second, as a sort of viceroy or commission of the sovereigns in league, to do the "business" of their "defence" on their respective territories, and with their authority and means, — Uncle Sam to continue doing this "business" as long as he uses the said foothold, authority, and means in "providing for the *defence* and *safety* of the said state, and *no longer.*"

Surely no king of earth was ever more of a sovereign than New York! If Fort Lafayette, standing on her conditional and defeasible grant, menace her with attack and destruction, if she do not yield her will at the command of the said Uncle Sam, should she, and would she not, with guns, speak her judgment, annulling the federal tenure? If she cannot rightfully act so, in such an exigency, she is a province, and not a state, a subject, and not a sovereign, having returned to the condition she held under Britain, and nullified the American revolution!

CHAPTER IX.

OTHER SOVEREIGNS LIKE NEW YORK.

NEW YORK, then, exhibits herself and appears, in the present federal system, as the absolute sovereign within her boundaries; and the association called "the united states," so far as relates to its foothold, to its use and occupation of property, and to its governmental jurisdiction on the soil of New York, appears simply and only as her agent and grantee. Nay more, all of New York's grants of sites for forts, navy-yards, lighthouses, etc., are accepted from her, by the said associated states, on the express condition, in each case, that they "are to retain such use and jurisdiction, so long as the said tract shall be applied to the use of providing for the defence and safety of the said state, and no longer."

On New York's soil, federal authority is solely her own authority, delegated for her own purposes; her safety, and the security of her sovereignty, or right of self-government, being the vital objects; and those who act in wielding the same only appear as "representatives," "agents," "servants," and "trustees," as the fathers all habitually called them.

There can be no possible question that this is the correct view, for New York has, from the beginning to this day, kept the solemn declaration in her fundamental law — and she entered the union with it — that: "No authority shall, on any pretence whatever, be exercised over the people or members of this state, but such as is, or shall be, derived from, and granted by, the people of this state."

I cursorily review New York's case at the opening of this chapter, because it is, in principle, that of the rest, as will now be seen.

Queen Massachusetts speaks idem sonans. — This federalized or leagued sovereign, like New York, grants the sites of forts, navy-yards, lighthouses, etc., which she thinks necessary for the "business" of "providing for" her "defence" and "welfare," to the associated states, to be held so long as the said "business" remains entrusted to said states. Her conditions are the same as New York imposes. Her status is precisely that of New York. Her fundamental

law and her whole history show that all federal authority exercised on her soil is delegated by her, and remains hers; and that all federal sites and jurisdiction are to be used solely for her "defence and safety," leaving her sovereignty unabated. For example, in the act of June 25, 1798, she cedes Castle Island, in Boston harbor, to "the united states," declaring that "all civil, and such criminal process as shall issue under the authority of this commonwealth, . . . may be executed therein, in the same way and manner as though this cession and consent had not been made and granted." See also the act of June 17, 1800, "authorizing the united states to purchase the site for the navy-yard at Charlestown"; and the acts of June 20, 1795, and June 20, 1816. These sites are to be used for "the defence and safety of the state;" and the sovereign declares in some, if not all, of the acts, that when the federal foothold ceases to be used for the purposes contemplated, the grant of it is to be void, and of no effect."

In her revised statutes of 1836, page 56, will be found the following: "Of the jurisdiction of the commonwealth, and of the concurrent jurisdiction of the united states, over places ceded by the commonwealth: — Section 1. The sovereignty and jurisdiction of the commonwealth extend to all places within the boundaries thereof; subject only to such rights of concurrent jurisdiction as have been, or may be, granted over any places ceded by the commonwealth to the united states. Section 2. The several places here following, which have been ceded to the united states for forts, arsenals, dockyards, lighthouses, hospitals, and other purposes, and over which concurrent jurisdiction has been granted to the united states, shall continue to be subject to such concurrent jurisdiction, according to the tenor and effect of the respective laws of this commonwealth, by which they were so ceded." Then follow designations of about fifty federal sites.

The Voice of Pennsylvania on the Subject. — In her cession of Mud Island, she specifies the use, makes the grant void if not within a year accepted, with conditions; and provides that "the jurisdiction of the state of Pennsylvania over the said island, in civil and criminal cases, be the same as before the passage of this act." See also act of assembly, Feb. 1, 1796.

The act of April 18, 1795, provides for the survey and cession of several tracts at Presqu' Isle on Lake Erie, "for the accommodation and use of the united states, in erecting and maintaining forts thereon," to be held by "the united states so long as they shall actually maintain a fort thereon, and no longer." This act contains the following: "And it is the express intent and meaning of this act that

nothing herein contained shall be deemed, construed, or in anywise taken to cede and transfer unto the united states the jurisdiction or right of soil in and to the said three last-mentioned lots, but *only the occupancy and use* thereof, for the purposes aforesaid."

Pennsylvania thus shows herself to be absolute in her territory, and she only admits the federal government therein as the agent of the federation, to occupy and use definite portions of her soil for her "defence and safety," while she keeps her sovereignty and jurisdiction unabated.

Old Virginia acted in the Same Way. — In her code of 1849, is found an enumeration of the sites for the erection of forts, magazines, arsenals, dockyards, etc., the jurisdiction over which is granted by her to the united states. There are nearly a score of them, including Old Point Comfort and the Rip Raps. The chapter concludes as follows: "And the transfers of property and jurisdiction, authorized by the said acts, being subject to certain terms and conditions therein expressed; and with certain restrictions, limitations, and provisions therein set forth: It is hereby declared that this state retains concurrent jurisdiction, . . . and its courts, magistrates, and officers may take such cognizance, execute such process, and discharge such other legal functions within the same as may not be incompatible with the true intent and meaning of the said acts."

The act ceding soil and jurisdiction at Old Point Comfort (Fortress Monroe) contains the usual limitations, conditions, and reservation of jurisdiction, and concludes as follows: "And be it further enacted, that should the united states at any time abandon the said lands and shoals, or appropriate them to any other purpose than those indicated in the preamble to this act, that then, and in that case, the same shall revert to, and revest in, this commonwealth."

The Understanding of South Carolina. — President Jefferson reported to congress, February 3, 1806, "an act of cession, of the state of South Carolina, of various forts and fortifications, and sites for the erection of forts, in that state, on the conditions therein expressed."

Her act of December 19, 1805, provides that hereby is granted to the United States of America all the right, title, and claim of this state to the following forts, and sites for the erection of forts, etc.: Five acres at Fort Moultrie; twenty acres at Fort Johnson; three acres at Fort Pinckney; two acres of "the sand-bank marked 'C' in the plan of Charleston Harbor," etc. It is provided that commissioners are to survey and locate; that if the united states shall not repair the present, and build certain new fortifications, "this grant or cession shall be void and of no effect;" and that "all process, civil or

criminal, issued under the authority of this state, or any authority thereof, shall, and may, be served and executed on any part of lands, sites, forts, and fortifications so ceded by this act, and on any person or persons there being, and implicated in matters of law."

The act, then, requires that "the United States" "shall, before possession be taken of said sites, . . . pay due compensation to the owners;" and it exempts, in favor of "the United States," the property it thus allows that association to acquire, occupy, and use, from taxation.[1]

How distressing this revelation must be to the Websterian expounders of the day, such as Curtis, Pendleton, Adams, Jameson, Mansfield, Greeley, Lincoln, and others! What! must this great "nation," or great "union," or great "united states" go only as an agent into South Carolina, and under her grant? Must this mighty and august "union," or association, acquire its property in South Carolina just as John Smith does? Does it have no right of occupancy, use, or jurisdiction on the soil of South Carolina, but what it suits her to grant? Must Uncle Sam be exempted from taxation, just as Uncle Tom or Aunt Sally would be? And must this potentate hold his occupancy, use, and jurisdiction in South Carolina "so long as" he uses them "for the defence and safety of this state, and no longer"?

Are all these grants or cessions to be "void and of no effect," if the conditions afore-mentioned be violated? And are they primarily for her benefit, and subject to her will, so that she can raise her little foot, and (with no other restraint than the fear of getting whipped) kick the said avuncular relative out of her premises, if he violate her conditions, insult or menace her, or attempt her harm or destruction?

And when it is tritely said that "the military is subordinate to the civil power," do we mean that federal soldiers and officers, to wit, "the army and navy of the united states" and "the commander-in-chief"! are subordinate to, and never above, the civil power of South Carolina, *i. e.* her sovereignty and right of government?

All these questions are to be answered in the affirmative. And

[1] For numerous acts of cession on conditions and defeasible, see X. Stat. of S. C., pp. 74, 589, *et seq.* After much inquiry and considerable research, aided by friends of ability in South Carolina, I am almost forced to the conclusion that the united states has never had any title to the site of Fort Sumter. One of them says: "The view that this fort has never been ceded is much strengthened by the ordinance of April 18, 1861, which makes a general grant to the Confederate States of the occupation and use of all the forts, etc., lately in possession of the united states, together with Fort Sumter," etc. Is it possible that Uncle Sam was on Miss Carolina's premises by her permission and for her uses, and that he threatened to shoot her, if she did not let him be master?

history shows that these were the views of the fathers, so far as they expressed themselves on ultimate sovereignty and final remedies.

All historical evidence shows South Carolina to have been, and to have intended to remain, an absolute sovereign; to have used her own exclusive reason, judgment and will in making a voluntary union with her sister states, to "provide for" her and their "defence and safety;" and, finally, like New York, Massachusetts, and Pennsylvania, to have confided her powers, men, and means, and permitted federal foothold on her soil, on the express condition that "the United States" was to hold and use them "so long" as they were "used for the defence and safety of the state, and no longer."

So say the New States. — As the universally accepted principle was that new states, admitted by *the congress of the states*, from time to time, into *the union of states* [Art. IV., § 3], became equally "sovereign, free, and independent," they are naturally to be expected to have similar records as to the subject in hand. For instance, Alabama provides that "the united states may acquire and hold lands within the limits of this state, as sites for forts, magazines, arsenals, dockyards, etc., as contemplated and provided by the constitution of the united states" [Ala. Code, Art. III., § 21, p. 61]. "The governor . . . is authorized, on the part of the state, to cede the united states jurisdiction over such lands, to hold, use, and occupy the same for the purposes of the cession, and none other. The jurisdiction thus ceded does not prevent the execution, on such lands, of any process, civil or criminal, under the authority of this state, nor prevent the laws of this state from operating over such lands" [Ibid. § 22]. Alabama then proceeded to provide for the security of united states property, and exempt it from taxation.

Surely, where the only foothold and jurisdiction the union of states can have in a state, is granted by the latter on conditions that the same is to be used for certain purposes, and no others, and be held just so long as used for the defence and safety of the state, and no longer, the proper conclusion or principle is, that the state is sovereign, and that the governmental agency of the united states (the said states being themselves the government) is subordinate to, and without control over, the state.

CHAPTER X.

SOVEREIGNTY IN THE NEW STATES.

IMPORTANT quotations apposite to this subject are to be found in Chapter VII. of this Part. Of the great publicists quoted, Montesquieu and Vattel were, at the time our federal polity was established, the best authorities of the world on public law and political philosophy; and they — especially the former — greatly guided and influenced our fathers in their grand work.

These publicists laid down the principle that republican states can make of themselves "*an assemblage of societies, that constitute a new one, capable of increasing by new associations.*" Such confederation, being "*composed of small republics, it enjoys the internal happiness of each,*" while, by uniting their strength, means, and wisdom, they have "*all the advantages* OF LARGE MONARCHIES." They do not, by uniting, part with their sovereignty.

The idea, on the one hand, is that the individual, self-governing people can, in small communities, ascertain, comprehend, and act upon the comparatively few facts necessary for self-government and the promotion of "internal happiness," while they could not possibly do so over an immense area and population. The idea, on the other hand, is, that all these societies or states shall, as one state, hold relations with the outside world, and be able to command respect as a member of the family of nations.

Here, in epitome, is the very system which our fathers sought to establish. It suits, with expanding autonomy, our growing country and rapidly increasing people, and assures to all Americans, however distant in space or time, the safety of their inherited "blessings of liberty"!

Of course our statesmen must have expected that the thirteen self-governing peoples, which they were then inducing to federalize themselves, would greatly "*increase by new associations,*" so that, in time, through natural growth and immigration, commonwealths or republics would be spread over this vast continent, each enjoying the priceless "blessings of liberty" and autonomy, — "representative democracy and the federalizing of states," to use Joel Barlow's expression, —

being "the consoling principles" "on which we have founded our constitutions."

Our system, then, is "representative democracy," *i. e.* societies of people governing themselves through "substitutes and agents," and the federalizing of states to form "the united states." The adding of new states, from time to time, and the growth of all in population, wealth, and power, have resulted in our present grand sisterhood of thirty-eight commonwealths, — the republic of republics. I now proceed to consider

The origin of new states, their sovereignty or right of self-government, and their relations with the rest, and with the common government; and, at the outset, I assume and expect to show that all the commonwealths, old and new, are absolutely equal, and are the real governments of the land, and the source of all law, — they, as republics, governing themselves, both separately and federally, and being subject to no power on earth.

In discussing the formation of new states, we have primarily and principally to do with men.

"**These constitute a state;**" and we must consider them in two aspects: First, as human beings, created as free moral agents, and thus endowed with the right of self-government by Deity. [See Part V., Ch. IX., *infra.*] Second, as citizens or subjects of a state, who obey the social instinct in uniting themselves for self-protection and self-government, the obligation of the body being to govern and protect, while each member's reciprocal one is to obey, support, and defend, these mutual obligations being the real social compact, — an entity resulting from actions, which speak louder than words. Thus do "men constitute a state." [Part IV., Chs. I. and II.]

The right of self-government in man is the germinal idea of all republicanism. It is the starting-point and test of all our political problems. Men are the source of all governing power. They, as individuals, are subject to themselves as a commonwealth. This is self-government. Moreover, the right of self-rule in man is to be abridged only by his consent, he and his associates in conjoint self-government virtually saying: "I remit to the society we form, certain acts, to be done by and for all, on all, and agree not to do them myself." So it is with the right of self-rule in states, as "moral persons" or bodies-politic. In federating they virtually use the same words. No abridgment is rightful unless based on voluntary consent. The society is the home government — the societies the general one.

We now see alike the natural origin of new states, and the evidence of their equality. We must regard men as equal, and the bodies they form as equal, all being under only voluntary engagements. This is

political freedom. It is the rope of sand so many thoughtless people whine about, — the strongest cohesion possible to any really republican people, but the weakest, as it ought to be, where truth, justice, amity, and mutual interest are gone, and where government stands by armed force, instead of the suffrage of human hearts.

The people, as the collective *body* called the state, have the corresponding collective heart, mind, reason, judgment, will, and conscience, the essential faculties of a moral being, — a being that must have the collective *instinct*, and of course the collective *right* and *duty*, of self-preservation.

We see also that men are naturally in society, and that these individual self-governors or voters must require that the area covered by the society should be small, with facile methods and means of finding facts and exchanging views, so as to reason and judge upon them in the performance of their governing duty. The larger the field the less intelligently the people can act in electing their agents, and holding them to duty and account. And it follows that, as to our general, outside, inter-state, and international affairs, these self-governors must regard them as too distant and difficult to comprehend, and therefore must send special and fit agents, with written powers, to attend to them.[1]

The *rationale* of our system, and the wisdom of our fathers, are thus shown. Just think of an Oregonian farmer investigating Floridian affairs, to get the facts on both sides of every subject, for that judgment which a vote is, if it is anything at all, when the poor fellow is not even properly informed as to his own county's affairs! Just think, too, of statesmen resolving, at the end of one hundred years' experience of our system, that our fathers' wisdom is foolishness, that these "states is a nation," and that each citizen thereof must investigate, understand, and vote his judgment on all the said nation's affairs, local as well as general! for such is necessarily the duty of the members of a self-governing nation.

Let us now see the historical

Distinctness of the first new states on the continent of America, when they were, so to speak, widely separated islands in a sea of barbarism. The self-protection and self-government of the colonists, by

[1] "It is natural to a republic," says Montesquieu, "to have only a small extent of territory, otherwise it cannot long subsist. . . . In large republics, the public good is sacrificed to a thousand views; in a small one, the interest of the public is easily perceived, better understood, and more within the reach of every citizen; abuses have a less extent, and, of course, are less protected." He also shows how Sparta lasted, because, after its wars, it did not extend its area, and how Athens and Lacedæmon, by ambition to go outside, control the union, and become large, lost their liberty to a monarchy. Note the immense republics of France, and the revolution-breeding centralisms of Paris.

collective action and in collective forms, were aimed at; and so it will be as long as time and men shall last, and new commonwealths be formed.

Referring now to the beginning of the first chapter of this work, as well as Chapter I. of Part IV., both of which should be read herewith, I wish to impress on the reader's mind that most striking fact, that in all the history of the rising states, their absolute separateness and individuality was never for a moment doubtful. There were temporary leagues or unions for common defence, in which they always acted with that entire and independent individuality, which would be exhibited in the joint action of so many men. Not only so, but there were imperative reasons why no coalescence or joinder of population on any national basis, could or should have been made; and we know that, no matter what was done previously, the second of the articles of confederation and union pledged the faith and strength of all the states to each, that she should be independent in existence as a state, free in will, and sovereign in authority, with no power out of her but what was expressly delegated to the united states, and entrusted to the federal agency, to be used for her and her united sisters.

Aside from the isolation above referred to, let us look at .

Their different forms of polity, which were of three origins and kinds: —

1. *The provincial form*, in which the crown commissioned governors, and appointed a council which formed an upper house, while the planters elected the lower one of the legislature.

2. *The proprietary form*, in which the proprietor appointed governors, and authorized legislators. It was a kind of feudatory principality or county palatine.

3. *The charter governments*, which were political corporations. The governor was named by the crown. The people elected the general assembly. Both frame and powers of government were provided for in the charter. [See I Story's Com. § 159 *et seq.*]

These three kinds of government were so interlocated that any combination in governmental action, except by league, was simply impossible, and the idea of it absurd. New Hampshire was provincial; Massachusetts and Connecticut, chartered; New York, provincial; Pennsylvania and Maryland, proprietary; Virginia and the Carolinas, provincial, and Georgia chartered. To say nothing of the proprietors living in England, no coalescence could be had without the assent of the sovereign mind, which always presumably preferred their separateness. *Divide et impera!*

Separateness in Religious Faith. — As to their possible religious yearnings to be in sweet communion joined, following their colloca-

tion, we find them Puritan, Baptist, Dutch, Swede, Quaker, Catholic, Episcopalian, Huguenotic, etc.

For these and other reasons, the colonies were probably no more disposed to become one state, or a nation of provinces, than so many states in Europe were. Their common circumstances, common desires, and common needs caused some common sentiments and views. A mere shade of general public opinion prevailed, and much general sympathy was felt, — about as much, I presume, as is usually found among neighboring and friendly states.

Their neighborhood, similar history and traditions, their inter-colonial amity and sympathy, their like principles as to freedom and government, and, above all, their great and menacing danger from their powerful sovereign and foe, did actually cause them to propose joint action, and did finally consolidate them into a military phalanx of states, each absolutely free in will, but all united in a heroic effort for their independence. Their motive and thought took the form of a motto, — "united we stand, divided we fall," — but it was as distinct states that they were to unite to avoid falling. Each had its own absolute individuality; its own peculiar representation in any joint action; its own *esprit de corps* and will; and its own *instinct* of self-preservation, which, of course, involves the *right* and *duty* of self-preservation.

The Myth of Nationality. — Some latter-day writers boldly assert that a spirit of nationality showed itself early, and grew in strength till independence, when it culminated in that more intimate union the people yearned for, which they call the nation; and one of them spends a hundred pages or more describing "the birth of the nation," without giving a fact, or phantom of a fact, evidencing such monstrous event. It is as fabulous as the phœnix! Every fact of history contradicts the theory, and shows that all the acts and thoughts of the people and their leaders, were of voluntarily united states — federalization instead of nationalization.

What do these astonishing writers mean? Is it to no purpose that Fisher Ames, Theophilus Parsons, Samuel Adams, John Hancock, Governor Bowdoin, and others all declared, in the Massachusetts ratifying convention, without the dissent of a single friend of the constitution, that the nationalizing theory was unfounded; that "a consolidation of the states" "would subvert the constitution;" and that "too much provision cannot be made against it"? [*Supra*, Part II., Ch. II.] Is there no weight in the fact that Hamilton, Madison, Washington, Livingston, Marshall, Pendleton, and others are on record to the same effect, that they vigorously met this very issue, and, by their signal triumph, barely saved the proposed system from

defeat? Will mere audacity of unfounded assertion, at this late day, unwrite the written history of Massachusetts, which, in every line and word, supports the separateness of existence, freedom of will, and absolute sovereignty of the state in the union?

Why should we, the grown and educated men of the country, with our knowledge of one hundred years of federal history and "federal liberty," be told, and compelled to swallow, the false and foolish dogma that these "united states is a nation," — an idea dignified by supposing it to emanate from debating boys, who have not yet reached their historical and grammatical studies? Let us now pass on to

The New States of Latter Days. — I have argued to little purpose if I have not made it obvious that we must accept, in our arguments, the free man and the free state, — the free men, who contract to be in society, and the free societies, who contract to be in union, the tie in both cases being a voluntary engagement. [Vattel.]

Nay, more, Americans must of necessity always assume the capacity of man for self-government; for we have unceasingly vexed the ear of the world with the assertion of it; and we point proudly to Massachusetts, Connecticut, Virginia, Georgia, and other states, as having respectively governed themselves, through generations, with signal success.

Again, we must consider that the people rule themselves of *original and inherent right*, both locally and generally; for, as Madison says, in Number 46 of the Federalist: "The federal and state governments are, in fact, but different agents and trustees of the people, instituted with different powers. . . . The ultimate authority resides in the people alone."

States are Societies based on the Heart. — Again, we must keep it in view that all republics are based on the human heart. Men consociate to gain what they, in their hearts, desire, hope for, and feel the need of; they press forward with confidence and energy into the future, and into the wilderness, to better their condition; and they strive for wealth and the objects of ambition, and yearn for the happiness of domestic life. They are moved to daily action and duty, and even to dare danger and death, by the hold on their hearts that home, family, kindred, friends, neighbors, and fellow-citizens have; all these being in the society, or commonwealth, to which they belong, and which they necessarily form by coming together under the reciprocal obligations heretofore mentioned, — the obligations of the social compact. Here is their only conceivable tie of allegiance. They are bound to and in the society that "*protects*" them, *promotes their* "*welfare*," and *secures their* "*blessings of liberty*." In short, allegiance is due to themselves, — due by each to all, — no king existing hereabout for allegiance and loyalty but King People!

How Men become New States, and these Sovereign. — In starting to find the above, let us keep it in view that the American people are not only subjects (*i. e.* members and citizens) of states, but the states themselves. They as such own all the territory, and have sovereignty over it. Each state is sovereign over that within its own borders, — all are jointly sovereign over that without the states.

Now it would be absurd to say that men can, when only subjects, and out of the society in which alone they have governing capacity, go on the territory of the united sovereigns, and, by simply associating themselves, generate a sovereignty there, which shall supplant the sovereignty of the united states! This is the "squatter sovereignty" doctrine, as taught by Cass and Douglas.

The congress of states has the right to say, and practically does say: "You pioneers or settlers have the privilege of emigrating to, and occupying, the territory of the united states, within certain limits, on condition that you organize yourselves, abide by the law, keep order, observe morality, promote education, etc.; so that, when sufficient in numbers, you will show capacity for self-government, and fitness to be an equal in this community of communities, or republic of republics."

The Status and Rights of a Settler. — *Once a subject always one*, is perhaps as true in a republic as in a monarchy. He must be a member of society, a part of government, and a subject of law. Being a republican, however, he can change his societal connection at will; but no expatriation is, or can be, recognized, which would exempt him from societal duty and law. Even if not generally implied in social compacts, some of the states seem to express it. Thus Vermont declares that "all people have a natural and inherent right to emigrate from one state to another that will receive them."

The intending members of the new state, then, go with the permission, and form society under the protection of the sovereigns — the united states; and, with *the status of men and citizens*, they perfect or consummate the transfer of their citizenship, when the new state is completed, and her equality is acknowledged by the congress of the previous states. "New STATES may be admitted by the congress into this union." [Constitution, Art. IV. § 3.]

Whence comes the New State's Sovereignty? — The germ of this right of self-government is inherent in man, as has been shown. The complete sovereignty is inherent and original in the collective people, though on the federal domain it is in abeyance for want of right to exercise it; the case being much like that of a man abroad from his commonwealth, who, though he has the *status* of citizen, cannot in many respects use it. For example, General Grant was a citizen and subject of Illinois before, during, and after his presidency

and his travels, but he could aid in ruling, only at home, and under the state, — that is, when properly circumstanced.

Is it not obvious, then, that the congress of states, by admitting a new state, acknowledges her equality, and her sovereignty over her domain, as well as her equal right to participate in federal government; but *does not confer sovereignty* by the admission?

We must note that the power of congress is not one to admit a province, or other subdivision or dependency, or any body of lower grade than a state, *i. e.* a political organization of equal rank with those already in union.

With deference, I submit some reasons for this view: —

The power to admit states must be strictly confined to what is written. Without some expression, it cannot be presumed that the states intended to have any inferior bodies in the union. Webster's powerful argument for imposing conditions on Missouri [see Appendix F] was not followed; but the opposite principle seemed to prevail. Among other advocates of it, the great Clay, in 1819, came down from the speaker's chair, and argued five hours against conditions, and hence for absolutely equal states.

The technical word "state" is applied, in the constitution, to New York, Virginia, Maine, and Texas, just as it is to France, Italy, Russia, and Spain. [Art. III. § 2; Amendment XI.] And the very thing that makes a state differ from any inferior political organization, is sovereignty. As Daniel Webster said — when the constitution uses well-known language, it uses it in its well-known sense.

Again, at the very moment of using the word "state," to designate one of the parties that were to ratify and establish the new constitution, the then existing league or federal compact pledged the faith of all the states, that each was a sovereign one, up to the actual going into effect of the new system. [See the 2d article of Confederation.] And this equal sovereignty of the states in the union, was the view of all the leading fathers. [See Part I., Chapter VII.]

And, finally, the country has always acted on this idea, for North Carolina, Rhode Island, and Texas were confessedly admitted as absolutely equal, while the ordinance as to the northwest territory, and the Louisiana treaty, provided for the admission as equals of the new states to be carved thereout. Can you think, dear reader, of any political difference between Ohio and Connecticut, Virginia and Missouri, New Jersey and Texas, Georgia and California, as to *status*, capacity, or rights? Has not each her name, people, organism, autonomy, and place and representation in union? Can it be that the common governmental agency of these sisters holds discretion to treat them otherwise than as absolute equals?

CHAPTER XI.

THE ULTIMATE ARBITER.

ON the questions of ultimate supremacy and self-preservation, the fathers seldom did more than incidentally speak, but, as far as they went, they spoke plainly; and all the history of establishing the American federal polity shows, that, in devising the system, they assumed the existence, integrity, and sovereignty of the states, as pre-existent and indestructible facts or entities. The great aim of all was to *preserve* the said communities, and unite their authority in the general government of their subjects, and their strength in their common defence. To these ends, the said thirteen communities, which the people were, federally made an agency, and charged it with a few important specific duties. As to such matters as prevention, defence, and remedy against evils, dangers, attacks, and hurts, local and internal, — these pre-existent commonwealths, each with full mental and governing faculties, original right, and unlimited power, took natural cognizance, and made full provision. The capacity, the authority, and the duty of self-defence must be where dwells the original and inherent mind; for the idea of direct mental, or instinctive, control of physical force is necessitated; and, as attack and hurt are local, the original right, the self-capacity, the self-power, and the sense of duty must be on the spot, feeling, knowing, and acting at once, and directly, for defence or repulsion. Where harm can come, the power and duty to protect and remedy should be near.

No Federal Capacity or Duty for Direct Local Defence. — On the other hand, the federal "agents and servants," as the fathers call them, are far removed from the troubles; they only act with delegative authority, and as directed in writing; they are charged with a few important general affairs, and prohibited from meddling with local ones; they are not in duty bound even to know of, originally, much less act on, danger or harm in a state, but must await official advices of it, as well as a formal official call for aid, — if this be needed, — a call not made on them, but on associated sovereigns, under a treaty stipulation, — a call which the government can respond

to, only as an agent and servant. A million cases of domestic violence might occur, without the power, duty, or even attention of the federal agency being required; and in our ninety-odd years of federal history, we have had but two or three such exigencies.

It is obvious, then, that all the essentials and ideas of ultimateness are concentred in the commonwealth, where the inherent and original mind dwells, and, in self-defence, directly and functionally acts, with its own organs and instruments; and where Jehovah has placed both the power and the duty of self-preservation. And it seems to follow necessarily: 1st. That the state is the ultimate arbiter on all questions — certainly, on all that touch her existence, integrity, and sovereignty; 2d. That as the only questions the states, as the establishers of the constitution, intended to place under their federal government and courts, were selected and stated in the federal instrument, all thereout must remain inter-state or international in their character; 3d. That all interpretation or construction must be in favor of the grantors and against the grantees of powers; and 4th. That any federal official, to save himself from the stain and infamy of perjury, must show the written intent of the people to be, that he shall have the specific powers he claims and uses. And here I would stop and ask of the federal judiciary — with due respect, but most solemnly and earnestly — to show the power or powers that make them and their co-ordinates "*supreme and above the states*" that gave them official existence; ratified and established their only commission; and exacted their oath to obey and preserve it.

But let us proceed further on this line, and ask the question, in reference to the "terms of union," as the fathers called them, or the "articles of union," to use the federal convention's phrase:

Who is to Judge of Broken Conditions and Forfeitures? — On reflection, we shall see that when South Carolina (or Massachusetts) federalized herself, she was acting with her own will, from the instinct and with the duty of self-preservation, under the direct authority of God, Who, by making the social instinct a part of man's being, caused society as much as He did man, and made "self-preservation the first law of nature" for both.

Self-preservation of the state, then, being the object of both the grants and the conditions, who is to judge as to the violations of the conditions and the forfeiture of the grants, the grantor or the grantee? the sovereign or the subject? the principal or the agent? the master or the servant? The question needs no answer. The God of nature has determined it as to any state — for instance, South Carolina, New York, or Massachusetts — by making self-preservation the first, best, and most imperative law of her being, and giving her a distinct

and independent intellect with which to investigate, reason, judge, and will. The possession of mind constitutes the moral being, and implies moral obligations. The state's instinct and duty of self-preservation, like her bodily and mental individuality, continued unchanged after the union was formed, so that she was morally compelled to consider and decide — and especially in the last resort — any and all questions affecting her being, her integrity, and her right of government. And under the reciprocal obligations between Massachusetts (or South Carolina) as a body, and the members composing her, she is to govern and protect them, and they are to obey and support her. These duties are essential to the republican social compact. Her statehood and sovereignty involve their liberty. They are she, and she is they. This compact is the only possible tie of allegiance, for the state stands in place of king, prince, or feudal lord. [IV. Kent, 424.] They are bound to defend her, and she them, to the death. This is the law of their nature and of God. She cannot delegate the power to decide in the last resort, but must exercise it herself. If she do not, she abandons statehood, and becomes a province or county, gives up her mental nature and will, neglects the highest of moral duties, violates the sacred law of her God-given being, and, in a word, commits the heinous crime of suicide. Hamilton himself, in defending the present federal pact against the charge of consolidating the states, or abating their ultimate sovereignty, said: "The states are essential component parts of the new system" — "The destruction of the states would be political suicide." [II. Ell. Deb. 304, 353.] And he further said: "The state governments will, in all possible contingencies, afford complete security against invasions of the public liberty by national authority. In a confederacy, *the people*, without exaggeration, may be said to be entirely masters of their own fate." [Fed. 28.]

The Pact Itself agrees with the above Philosophy. — In the first place, the constitution recognizes throughout, the distinctness of individuality, and absolute independence of organism, mind, and will of the states; and winds up by providing that the said wills are to "ratify," and thereby "ordain and establish," the instrument and the government under it; each will to be declared by a convention. [See Article VII. of the pact.]

In the second place, it provides that the wills of states are to amend. The will to do, and that to undo, must be equal. The power to repeal is precisely commensurate with that to ordain and enact. The will which "ordained and established," necessarily lived through the act, and continued unimpaired, so that it could, as it was in duty bound to do continually, consider whether the constituted government did

actually "provide for the common defence," and "promote the general welfare." The wills of the states necessarily survived, looked back on the system, pronounced it good, and must have intended to amend, or in the last resort abolish, if it did not continue good, for they provided for the power to amend (in Article V.), which includes in its nature the power to abolish. If the states are compelled to keep that which their respective judgments originally approved, and their wills adopted, but which the said judgments afterward find to be bad and destructive, surely "tranquillity," "justice," "defence," "welfare," and "liberty" cannot be thereby "provided for" and "promoted." [See the federal preamble.]

Both political philosophy and the constitution, then, show Massachusetts (or South Carolina) to be a complete state with a sovereign will. Her right and duty of self-preservation are absolute. If endangered, she is bound to defend herself — "peaceably if she can, forcibly if she must."[1]

This is plain common-sense; for these wills, having voluntarily ordained, could, if not enslaved, respectively undo what they had respectively done. It was never denied that the union was voluntary when made. When, and by what act, did it become involuntary? When the indissoluble union begins, voluntariness and freedom end, and the states are back precisely to the provincial condition they held under Britain. So that, as to South Carolina, if the powers she put in the constitution, and the forts she qualifiedly granted the sites of, and permitted to be built, were used, or attempted to be used, for her harm and destruction, instead of her "defence and safety," she was in duty bound to investigate, judge, and will. The gun fired at Fort Sumter spoke her decree annulling the federal tenure! If she was sincere in believing her being and sovereignty endangered, it was rightful and righteous!

The Expounders Virtually admit this Theory. — Webster and the federal supreme court have often unwillingly, or perhaps unwittingly, admitted the statehood and sovereignty of the American commonwealths, and their consequent absolute right of self-preservation, and especially in "The Bank of Augusta *vs.* Earle." [13 Peters, 519.] In this case they said the federal compact only included and settled

[1] In 1868, at the Virginia White Sulphur Springs, W. S. Rosecrans, A. H. Stephens, General Lee, and others, issued a political document to influence the then pending election. Among other things it declared that the South had given up forever the right of secession. In other words, they had alienated or parted with what God had incorporated in their natures, and made inalienable. It is evident that the declarants did not understand the source and nature of the right. However, political declarations in America are intended more to attract votes than to promulgate truth. Is it not so wherever candidates are allowed to solicit them?

the questions it provided for, leaving all others outside, to be settled under and according to the *jus gentium*, *i. e.* by diplomacy or force. This admits sovereign states, and that every question involving the integrity or sovereignty of a state must be for her decision. If not, she is a slave, and not a sovereign; and she violates her nature if she declines the decision, or the enforcement of it.

The sovereignty of the united states then, to use the expressions of James Wilson, who stated the views of the fathers on this subject, "resides in the people" as they are organized, *i. e.* it dwells in commonwealths; "it never leaves them;" it is "in the people before they make a constitution, and remains in them after it is made." [II. Ell. Deb. 432, 456.] It is well to repeat here Mr. Webster's admission that sovereignty with us has never left the people, and that sovereignty cannot be in the government: also Curtis's admission, that our governments are only "agents and depositaries" of authority.

The Guaranty of all to Preserve Each. — The following clause (Art. IV. § 4) was especially designed to secure the absolute integrity and sovereignty of each commonwealth: "The united states shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence." This clause can but mean that all the states guaranty each to be and to remain a republic; in other words, that she (*i. e.* "the people") shall govern entirely and absolutely. "A republican form of government" means a republic; and there can be no republic unless the people govern themselves in everything.[1]

The above-quoted clause means precisely what the second article of the first federal constitution meant, to wit: that "each state retains [and its associates are to guaranty] its sovereignty, freedom and independence." It means that the state is to govern herself as to her home affairs, and that the states are to govern themselves as to their general affairs; and finally, it means that state wills are always to be supreme, and are to be bound in union only by virtue of voluntary engagements.

The reader cannot fail to notice that it is everywhere *protection and defence*, and not attack and injury, of states, that the federal polity is intended for. I have heretofore shown how the constitution provides for "defence" of the states, — to use the word of the preamble. We

[1] The liberticides of America pretend that keeping up the "form" satisfies the obligation. So they rule states from Washington, while keeping up *simulacra* for republican governments. All will admit that a monarchical form means a monarchy; an aristocratic form an aristocracy; and "a republican form a republic."

have heretofore seen that the cessions of occupancy and use of the sites of forts, etc., made by the states and accepted by "the united states," are expressly for "the defence and safety of the state;" the first part of the clause under consideration "guarantees" the continued existence and absolute self-government of every state; and finally, the latter part of the clause requires "the united states" to "protect" each of the states "against invasion" and "against domestic violence." In short, *the states, in making the constitution, and giving powers to their administering subjects, could but intend self-preservation and self-defence.*

Expressio unius est exclusio alterius. — The expression of a case or cases where the agency can enter the state with force and arms, is the exclusion of all other cases. The government, which lives, moves and has its being through state will, and is subordinate, can only enter states *vi et armis*, for the purposes of "defence" and "protection" they have specified: 1. To protect the states "against invasion" or external violence; 2. to protect them "against domestic violence." This latter is only to be when the state legislature, or (if it cannot be convened) the state executive, calls for it.

It is certain, then, that "protection" and preservation of the state, are held in view throughout the federal polity, and the history of it. Every act of the government must be in favor of, and not against the state. This all the fathers taught, and all the states intended.

"The Government" has no Right to Hold the States. — The pretence that there is in the general government a superintending and constraining power over states, is false and unphilosophical, for sovereignty "resides in," and "never leaves," "the people;" and hence the government constituted by "the people" must be subordinate to them, whether they acted as states or as a nation. The audacious utterance of the Philadelphia convention of 1866, that "the government" has "absolute supremacy" over allegiant states, is alike false, unconstitutional, and treasonable.

To make out its case, "the government" first assumes that the union is indissoluble; and secondly, that it has the right and duty of preserving the said union; that is to say, the states by their wills voluntarily united themselves, and in the same act created an agency to keep them together despite their wills, by whipping them with their own men and means. Virtually "the government" says to "the people," whose creation and instrument it is: "You, as bodies, came freely and voluntarily together; but you shall henceforth be pinned together by bayonets, and shall use your minds and wills no longer, except 'so far as' 'the supreme law' which gives 'the government' 'absolute supremacy' over you, permits."

Any semblance of governmental control of the political people is unprincipled, and the exercise of such control is usurpation and flagrant wrong; for the American polity is founded solely on man's right of, and capacity for, self-government. This necessarily implies self-organization and self-rule of commonwealths, and the right to fail in and abandon, as well as that to succeed in and continue, any given political or other experiment.[1] Such enforced supremacy of "the government" reduces the states to counties, nullifies their revolution of 1776, and remands them to colonial, or rather provincial, vassalage.

[1] Washington, Franklin, and all the fathers considered and called the present federal system an experiment. Indeed, all human systems must be such, owing to the finite wisdom which makes them. This is why Massachusetts and other states declare, what indeed common-sense teaches: that "that the people alone have an incontestible inalienable and indefeasible right to institute government, and to reform, alter or totally change the same when their protection, safety, prosperity, and happiness require it."

CHAPTER IX.

LINCOLN'S PLAIN ENGLISH.

THE foregoing interpretations produced irrepressible conflict, Lincoln and war! The doctrines of Dane, Story, Webster and others (taught, as I have shown, by the original enemies of the constitution, to prevent its adoption) produced, as George T. Curtis correctly asserts, "that body of *public convictions*" which moved and enabled one part of the states, by the use of the governmental agency of all, to *subjugate* the rest. Conceding here, once for all, that under the *jus gentium*, the former had as good a right to coerce, as the latter to secede, I pass on.

One of these "public convictions" was that the constitution was *a law upon* states, and not *a compact between* or among them; and it was this which made peace impossible in 1861. The successful party naturally said: "The constitution is the supreme *law*, and we are elected by the nation, to be the government; and to enforce the said *law* with the army and navy if necessary; and if states exercise judgment and will contrary to ours, in any affair, we must treat them as counties in rebellion. Power is given to us, by the nation, to rule them, and we are the final judges of the extent of that power."

"Subjugate" the states, I say, for all are subjugated, though of course the tame and obedient ones are not yet dealt with. By 1866, such progress had been made toward depotism, that the *conservative* convention, held at Philadelphia, declared "the government" to have "absolute supremacy!" and the states to be in "allegiance" to it!! The *personnel* of "the government" has become a corporate despot, wielding the stupendous enginery of imperialism over an empire of provinces. President Grant, standing near the close of his administration, and viewing the result of the war, of reconstruction, and of his own agency in shackling and coercing states, exclaimed, "What we have done in Louisiana and Arkansas, we will do in New York, Illinois, and Missouri, when necessary." Meanwhile, here, there, and yonder, all over the land, imperial acts were done, and significant emblems of central sovereignty set up — each with all the meaning of the cap of Gesler in the market-place of Altorf!

The founders of institutional liberty, knowing the tendency of all government towards tyranny, recognized this natural separateness of these governmental functions and agencies, and in some constitutions expressed and carefully guarded it. [See the constitution of Massachusetts.] Their aim, especially in forming the federal government, was to subject every measure of the rulers to several successive and independent examinations, tests and vetoes, so as to ensure the wisest and most efficient, and at the same time the most conservative, efforts to secure "tranquillity," "justice," "defence," "welfare," and "liberty," and, above all, to prevent the injury or destruction of the great palladium of all these blessings — the American constitutional polity. This is precisely the theory of those "checks and balances" so many talk of, and so few seem to understand and properly appreciate.

The three agencies under review are the mere mouthpieces, instruments, tools, or slaves of their creator, owner, master, and sovereign — the league of commonwealths, "the united states," "the people" — to speak and effectuate the legislative, executive, or judicial will, as the case may be, of the said sovereignty.

The Unheeded Form of Consolidation is the Worst. — Now the most dangerous form of consolidation in America is that which is least noticed and guarded against, if ever thought of, and that is the breaking down, by these agencies, of the walls separating them; their getting together and acting covertly with one mind, under the greatest temptations, without check and without responsibility; or what amounts to the same, the gradual gaining by one of them of a mastery over the others, so as to get undivided sway. In either case "the government" becomes a unit, and a corporate despot of the vilest imaginable character. If it did not, it would be superhuman.

Reasons why it cannot be a Grantee. — The only seat of that "endowment of the soul" called "will," which must be used in government, is in "the people" as organized, and "it never leaves them." Their right of freely exercising it, is sovereignty. Not only is this "faculty of the soul" resident in the people, but the government has no will, because it has no unity, and no corporate mind. Hence it cannot be a grantee of powers, rights, or anything else; but its capacity is simply that of an agent, or trio of agents, who hold nothing of right, must do as told, and remain abjectly submissive, so that without resistance, or even murmur, it, or they, can be kicked out of the way whenever the mighty mind of the people shall move their mighty foot to that end.[1]

Again, "the government" is never mentioned as grantee, while the

[1] The federal supreme court said "the constitution was written by the mighty hand of the people." Why then can they not have and use a mighty foot?

association called "the united states" always is. All titles to federal property, and to the occupation, use and jurisdiction of federal footholds — as has been shown — are made by the respective states, and to the "united states." Nay, more, the tenth amendment declares expressly that *all the powers* in the constitution are "delegated *to the united states.*"

Again, there is no grant whatever in the sense of alienation; but powers are delegated, *i. e.* entrusted to be used for the owners, "the people' — the users necessarily being "agents" and "servants." The expounding words "cede," "surrender," "part with," "relinquish," etc., that mean *alienate*, are quibbles, subterfuges, and fallacies; and they are found in the writings of every "expounder."

Again, the language of the pact shows everything still to belong to the states. Note the numerous possessive phrases — "the government of the * states;" "the treasury of the * states;" "the army and navy of the * states;" "the territory and other property of the * states," etc.

Again, the government could not be the grantee, because it did not have a being till long after the constitution had been completed by the only parties that then existed, or could exert will upon it, and the association of states had been, *ipso facto*, formed. In the fall of 1788, the congress of states declared the new federalizing instrument to be complete, according to its tenor, by "the ratification of the conventions of nine states . . . between the states so [*i. e.* by conventions] ratifying the same;" and the said congress provided for carrying it into effect, by notifying their constituents, the states, of the "sufficient" "establishment," and recommending that *they* should elect their government. Whereupon the respective state legislatures passed laws for elections. In accordance therewith, the states elected their own subjects as senators; their own subjects as representatives; their own subjects as electors to elect the president. And when, in the spring of 1789, the elected persons, as subjects, representatives, and agents under the law, had organized themselves to work in the vocation whereunto called, the government for the first time existed; and, as shown, it had no unity of body or mind, no will, no inherent and original rights and powers, but was composed entirely of subjects and agents who remained individually and collectively under the law, whether home or general, constitutional or statutory.

What! are these mighty "government" men under state constitutions and laws? Yea, verily, even under the laws of town councils, if applicable. Let the president, or all his government, go into Gettysburg and violate an ordinance, and he would learn the fact. The wills of the states have declared the federal law to be supreme.

What conflicts is no law. What does not conflict is law, and binding even on the proudest magnate or corporation in the land, whether governmental or not.

How then could this poor agency, instrument, or machine, be a party to the compact, and the grantee of delegations, of federal tenures of property, and of the use and occupation of sites for forts, navy-yards, etc.? The idea is absurd. It was the *league* or *federation* that was grantee. *Each state* granted to *the states*, as is proved by the tenth amendment, providing that all powers not delegated to the united states, are reserved. And, I repeat, every grant was a *delegation* or giving in trust, and not an *alienation*. As Judge Parsons said, "*The people divest themselves of nothing.*" Said Judge Marshall, in the ratifying convention of Virginia: "Federal and state officers are alike servants of the people, who hold their powers in their own hands, and delegate them cautiously for short periods, to their servants, who are accountable for the smallest maladministration." [II. Ell. Deb. 89; III. Ibid. 232.]

A Misleading Misnomer. — The phrase, "the government" — particularly when the big G is used — misleads the unthinking, unless the purely derivative, delegative, and agential character of the institution so named, is kept in view; for the real government of the republic, or of any republic, is necessarily the state itself — the so-called government being a mere agency or commission, created by the people, and empowered by them to administer their governmental affairs. The American bodies-politic govern themselves, — separately in domestic, and unitedly in general affairs. *They*, then, are the government. Hence it is that the first article of the constitution, as unanimously adopted by the convention of 1787, and never reconsidered, though left out by the revising committee, reads as follows: "Article I. The style of this government shall be the United States of America." "The government," then, is "the United States." And, in the nature of things, the government of each republic is the republic itself, while the government of the united republics is the united republics themselves.

Let us Symbolize the Polity. — The whole subject, then, in all its parts, being matter of fact or inference, we can present the grades and impartations of authority, as is done on pages 295–297 *supra*.

1. Suppose thirteen or more figures in a horizontal line to symbolize the organizations of people named in the constitution, and those since admitted. Part of the people were named Massachusetts; part Delaware; part Georgia; and so of the rest. The original commonwealths are still so named, and are unchanged; and the new ones are their political equals.

2. Next below, suppose the same figures to be grouped as the united states, and a line to be drawn from each of the above states to this association, to indicate the delegating of power, by each state, to the union of them. Each state is the delegator, and all of them united are the delegatee.

3. In the third grade, let us suppose a threefold figure to represent the three co-ordinate institutions which form the federal agency of government, through which the individual people are ruled. This figure shows "the government of [*i. e.* belonging to] the united states," subordinate to the said states, of course.

4. At the bottom we might place a figure to represent the same people that we see atop, but in their capacity as subjects, the republican idea of self-government requiring that, while they appear at the top, and above the institutions of government, in a corporate and sovereign capacity, they should also appear below the said institutions in an individual and subject one.

This process will lastingly impress the reader with the grades of our system — 1. the sovereign societies of people associated; 2. their governmental "agents and depositaries of power," as Mr. Curtis calls them — the congress, president, and judiciary; 3. the members, citizens, or subjects of the states, and their belongings. The first are the sovereign people, the last the subject people.

CHAPTER XIII.

FACTS MUST PREVAIL.

UNLESS we wish plain facts of history and the sacred records of our country to be subjects of contention forever, we must make up distinct issues, and charge either the sons or the sires with deliberate falsehood.

Let those who Devised describe the Polity. — The sires who planned our constitution of general government described it as follows. Apology for repetition can hardly be necessary: —

ALEXANDER HAMILTON said the present union is "an association of states or a confederacy;" and that "the people of New York are the sovereigns of it" [Fed. IX.; his address, 1789]. CHANCELLOR LIVINGSTON said our general polity is "a league of states" [II. Ell. Deb. 274]. JOHN JAY said "the states adopted" "the present plan;" and that it is a "union of states" [I. Ell. Deb. 496; II. Ibid. 282]. JAMES MADISON said "the states are regarded as distinct and independent sovereigns" "by the constitution" [Fed. XL.]. GENERAL WASHINGTON wrote of the constitution as a "compact or treaty;" and the union formed by it as "the new confederacy" [Let. to Gen. Pinckney, June 28, 1788; do. to D. Stuart, Oct. 17, 1787]. DR. FRANKLIN said the senate was to secure in the union "the sovereignties of the individual states" [V. Ell. Deb. 266]. JAMES WILSON said the sovereignty "is in the people before they make a constitution, and remains in them after it is made," and that the said people are "thirteen independent sovereignties" [II. Ell. Deb. 443; Mass. Centinel, Oct. 24, 1787]. JOHN DICKINSON called the new political system "a confederacy of republics," and he recognized therein "the sovereignty of each state" [II. Pol. Writings of J. D., 107]. GOUVERNEUR MORRIS said the constitution was "a compact . . . between political societies, . . . each enjoying sovereign power" [III. Life of M., 193]. ROGER SHERMAN said "the government . . . was instituted by a number of sovereign states" [see his Letter to John Adams in VII. Writings of J. A.]. OLIVER ELLSWORTH called the states "sovereign bodies" [II. Ell. Deb. 197]. TENCH COXE said the union was of "separate sovereignties,

joining in a confederacy" [Am. Mus. 160, 244]. CHANCELLOR PENDLETON, the president of the Virginia ratifying convention, said the people of Virginia were "the fountain of all power," and that the new system was "uniting the strength of thirteen states," each state "a sovereign state" [III. Ell. Deb. 297, 549]. JOHN MARSHALL (afterwards chief justice) spoke of the state in the union as "the sovereign power" [III. Ell. Deb. 555]. SAMUEL ADAMS said "each state retains its sovereignty" in the present union [II. Ell. Deb. 131]. GOVERNOR JAMES BOWDOIN spoke of the union as "a confederacy;" and of the states as "distinct sovereignties" [II. Ell. Deb. 129]. See also, to the same effect, the utterances of JAMES IREDELL [IV. Ell. Deb. 133]; FISHER AMES [II. Ell. Deb. 46]; THEOPHILUS PARSONS [see his Life, p. 98]; CHRISTOPHER GORE [II. Ell. Deb. 18]; GEORGE CABOT [II. Ell. Deb. 26].

The fathers, then, describe the American political system as a federation of sovereignties.

The Sons contradict the above Statements. — The Philadelphia convention, in 1866, declared that the states were unified into a nation or commonwealth of people, were degraded to counties, and were subordinated and made allegiant to "the government," which was possessed of "absolute supremacy"; and did, with tolerable accuracy, express the views of Dane, Story, Webster, Curtis, Greeley, Jameson, Pendleton, Adams, Lincoln, Johnson, *et id omne genus.* The constitution, said Mr. Webster, in his speech of 1833, makes us one undivided people, — a nation, — and "effectually controls state sovereignty." The states have only such *status* and rights as the national constitution gives them, said Mr. Lincoln. *We are changed from a league of states to a nation of provinces*, say they all, including Story and the federal supreme court. In 1876, just one hundred years after the states declared that they ceased to be provinces, and became sovereigns in place of England, these "*agents and depositaries*" ["I thank thee," Mr. Curtis, for these words] of "*the judicial power of the united* [*i. e.* associated] *states*" declare "the government" [of which they are a part] to be, "within the scope of its powers," [and all these "agents and depositaries" agree that, on all disputed questions of power, they are the ultimate arbiters], "*supreme and above the states*," and "*endowed with all the powers necessary for its own preservation*"! Startling idea! the creature can maintain its existence against any and all of its creators!

The Subject is Exclusively one of Fact. — The subjects of affirmation, in all these propositions, are subjects of fact and technical description, about which it is impossible for such men as I have named to speak, *pro* and *con*, innocently. They are all the most competent

witnesses the earth could afford, and all of them have made these questions of historical fact and testimony, special studies. They saw and knew what they were talking about. It is quite as justifiable for such men to say white is black, or night is day, as to affirm that separate states are an undivided nation, or that the league of commonwealths is a single state. There can be no escape from the charge that either the sons or the sires have wilfully "borne false witness." It is for the American people to decide which.

Construction or interpretation has here no place, though it is a common trick or subterfuge to interpret, in order to avoid plain words, and most lucid contemporaneous exposition. Legislative, executive, or judicial construction is proper, where those charged with duty find ambiguity or doubt in the meaning and intent of the words of their "powers." But the system was described as a fact, was recognized as a technical thing by all publicists, and was impressed on all men, and on the historic page, without reference to the acts of its government, and, indeed, before that institution was *in esse.* The system was established and describable in 1788, and was characterized by the fathers as above, while the government was elected, and began to exist and act, only in 1789. In 1788, it was a voluntary "union of states; a voluntary federation of sovereigns; a voluntary REPUBLIC OF REPUBLICS."

The Question Americans cannot Evade. — I have now presented the American polity, its history, and its philosophy, and placed the statements of the sires in contrast with those of the sons. The assertions are directly opposed. Between them "the people" must decide; for, by choosing to be republics, they have assumed the right and the responsibility of settling all questions. Is the general polity a union of people, or a union of states — a nation or a confederacy? And is the "absolute supremacy" of the country in "the government," or is it in "the people" as organized?

Americans will realize the wrong-doings of their "expounders" by reflecting, first, that the government in 1789 was entirely derivative, its authority being purely delegative and agential; second, that, instead of being since increased, its authority was diminished, or more carefully restricted, especially by the Ninth, Tenth, and Eleventh Amendments; third, that it now claims and enforces "absolute supremacy" over allegiant states, and declares that these have no *status* or rights except such as are "reserved to them" by the nation in its "supreme law."

A Hint to England and the American Provinces. — It seems, from our recent history, advisable to go back to the old faith, or to the old sovereign. As the American states, by permitting their *quondam* federal agency or commission to fasten absolutism on them, have

provincialized themselves, would it not be well, in case they do not wish to retake sovereignty, to propose to England a new Anglo-American treaty, and stipulate therein to be reincorporated, and restored to their ancient provincial privileges, in that glorious old commonwealth, whose polity, like her flag, has braved for a thousand years the battle and the breeze, — a polity, as her fond sons believe, at once free, permanent, and unassailable, being, as Tennyson writes, —

> "Broad-based upon the people's will,
> And compassed by the inviolate sea"?

PART V.

CITIZENSHIP, ALLEGIANCE, AND TREASON IN THE UNITED STATES.

PART V.

CITIZENSHIP, ALLEGIANCE, AND TREASON IN THE UNITED STATES.

CHAPTER I.

"THE PEOPLE" ARE SOVEREIGN STATES.

TREATING the matter in the main historically, or rather by quoting the statements and opinions of the fathers, I shall maintain the following

Fundamental Principles. — I. The people are the states, and, as such, they compose whatever nation there is; and the general government is the agency of the states, by and through which they exercise federal self-government.

II. The fathers contemplated, and tried to forefend, the danger of the federal delegative authority increasing, to the control and final destruction of the states.

III. Federal acts, outside of delegated powers, were to be treated as nullities, and, if attempted to be enforced, resisted as usurpations.

IV. The federal government is not only without authority, but is actually prohibited, to coerce the state with arms, by legislation, or even judicially.

V. The states in the union have the unlimited right of self-defence, even, if need be, against the federal agency.

VI. To defend the state with arms, in obedience to her will, is the duty of the member or citizen, and is not treason in any sense, but is true loyalty.

The reader will find the corollaries or considerations, involved in this last and most important point, stated at the beginning of Chapter VI., *infra*; and he should by all means read them now, for thereby he can see, and measurably appreciate, the scope, if not the pith, of the whole great argument. The last point (VI.) is the citadel of American institutional liberty!

The States are the People and Polity.

POINT I. — **The people are the states, and, as such, they compose whatever nation there is; and the general government is the agency of the states, by and through which they exercise federal self-government.**

The people are states, and are sovereign, for they are republics, or self-governing bodies of people. They were never organized otherwise. Nor have they any capacity for political action, except as states; and it is they (and not their government, local or general), that hold, inherently and *ab origine*, the sovereign, exclusive, and unqualified right and power to govern all the people and territory within them. Just as they pre-existed, they were named and provided for in the federal constitution, as well as recognized as the sole parties to and actors under it; and the identical, original states now exist, unchanged in any particular.

And the general government is their agency, for it is made up personally of their subjects, and it only possesses and acts by derivative and delegative power.

All the foregoing parts of this work are devoted to the proof of the above proposition, so that I shall content myself here with two or three decisive quotations, fully covering the ground, simply to indicate this link of the chain, while emphasizing and reimpressing the vital truth it involves.

Said DANIEL WEBSTER, in his speech of 1833: "The sovereignty of government is an idea belonging to the other side of the Atlantic. No such thing is known in North America. . . . But with us, all power is with the people. They alone are sovereign, and they erect what governments they please, and confer on them such power as they please."

GEORGE TICKNOR CURTIS states it as "the American doctrine" that all supreme power resides originally in the people, and that all governments are constituted by them as the agents and depositaries of that power.[1]

To the same effect, I quote from among numerous authorities before me, JAMES WILSON'S statement in the Pennsylvania ratifying convention: "The supreme, absolute, and uncontrollable power is in the people, before they make a constitution, and remains in them

[1] "Agents" do not act, or "depositaries" hold, for themselves. Hence, Mr. Curtis is solecistic in saying, as he does or seems to do, that they are the depositaries of sovereign authority, instead of "powers" delegated by the said authority. I accept his truth as an admission, and reject his mistake.

after it is made. . . . The sovereignty resides in the people, and it never leaves them." [II. Ell. Deb. 432, *et seq.*]

He meant the people as organized in societies or commonwealths, and not as a nation, for he spoke of "thirteen independent sovereignties" as the parties then deliberating and acting. [Mass. Centinel, Oct. 24, 1787; Am. Mus., Vol. I.]

I conclude this point by referring to the numerous quotations made heretofore from Hamilton, Madison, Washington, Franklin, Adams, and the rest of the fathers, especially in Chapter VII. of Part I., and by repeating that **the people are the states, and, as such, they compose whatever nation there is; and the "general government" is the agency of the states, by and through which they exercise federal self-government.** *Q. E. D.*

CHAPTER II.

FEDERAL USURPATION TO BE FEARED AND OPPOSED.

POINT II. — **The fathers contemplated, and tried to forefend, the danger of the federal delegative authority increasing, to the control and final destruction of the states.**

The use of undelegated power by the federal government, or the individuals thereof, involves their perjury and treason, for they are all sworn to support and obey the constitution, — such oath being, in effect, to use granted, and not use ungranted, powers, — the latter being "retained," or "reserved," by the sovereigns as their most precious treasures. And it was never dreamed of that federal officers — the elect of the people, and "the excellent of the earth" — could ever become such villains as to perjure themselves, and thus deprive the people of the great security against usurpation referred to by Webster when he said: "*The constitution, to preserve itself, lays hold of individual conscience and individual duty.*" The tendency and end of such federal increment is necessarily to degrade, and finally to overthrow and destroy, the sovereigns of the country. Unfortunately, encroachments on reserved powers in a republic are insidious and unappreciated, until their sum amounts to revolution and the loss of liberty!

When the federalizing of the states was under discussion, the great fear was that the general government might transcend its granted powers, to nationalize or consolidate them. The vehement attacks of Henry, Mason, Martin, Lowndes, Yates, and others, were nearly fatal. Every advocate of the new plan insisted on federalizing the states, and disavowed and denounced the idea of consolidating or nationalizing them. For example, the great FISHER AMES said, in the Massachusetts ratifying convention: "No argument against the new plan has made a deeper impression than this, *that it will produce a consolidation of the states.* This is an effect which all good men deprecate. . . . The state governments are essential parts of the system. . . . The senators represent the sovereignty of the states . . . in the quality of ambassadors of states. . . . *A consolidation of the states*

would subvert the new constitution, against which this very article [that providing for senators to serve six years] is our best security. *Too much provision cannot be made against consolidation.*" Said CHANCELLOR PENDLETON, in the convention of Virginia, in reference to this very objection: "If this be such a government, I will confess with my worthy friend [Patrick Henry] that *it is inadmissible.*" Similarly spoke others, in all the principal ratifying and delegating states; and no friend of the constitution ever dissented. The advocates of the plan, admitting that the federal functionaries were to be (not angels — but) men of average weakness and wickedness, showed the danger to be much overrated, and strove to ascertain it precisely, and forefend it. They argued, as will be hereafter seen, that there was no power whatever to coerce states in any manner; that the states had the right of self-defence, even against the federal government; that they only delegated power, or bound themselves in union, *voluntarily*, and could withdraw, or retract delegations at will; and, in short, that state integrity and sovereignty were secure.

Carefully Guarding against Consolidation. — Nay, more, out of abundance of caution, the advocates, to prevent possible dangers, or, at all events, to remove doubts, proposed amendments. This overcaution was started in the Massachusetts convention, where, after long and animated debate, it was found that the opposition was likely to prevail. Thereupon a "conciliatory proposition" was made by the federalizers, through John Hancock, the president, to the effect that the convention should ratify, with the understanding that the states should speedily make amendments. Chief among those proposed was the following: That "all powers not expressly delegated, are reserved to the several states, to be by them exercised." But even then, though Samuel Adams, the great leader of the opposition, joined Hancock, and both expressed "full confidence" in the amendments being adopted, such were the fear and prejudice, that ratification was only carried by a majority of 19 in 355 votes. [II. Ell. Deb. 181.] And, indeed, so deep and widespread were the apprehension and doubt on this subject, that in several of the states the constitution was barely carried. And Hildreth, the Massachusetts historian, thinks, on a retrospect, that if a vote of the general people had been taken, the decision would have been adverse.

This amendment was a mere truism, and was to give emphasis to what already existed in the nature of things; for actual delegations only were put in the plan; and the powers not put in were kept out, and, of course, retained by the *commonwealths of people*. Hence the amendment was needed only to enable the said people "clearly to see the distinction," remove their fears, and give confidence and hope.

This is evident from the debate and the ordinance of ratification [see II. Ell. Deb. 122–177, *et seq.*]; and Samuel Adams wrote Elbridge Gerry and R. H. Lee, in congress, in 1789, pressing on the latter, "the importance of the amendments, that the good *people may clearly see* the distinction between the *federal powers* vested in congress, and the *sovereign authority* belonging to the several states, which is the palladium of the private and personal rights of the citizens;" and urging to the former, that "without such distinction, there will be danger of the constitution issuing imperceptibly and gradually into a consolidated government, over all the states, which, though it may be wished for by some, was reprobated in the idea by the highest advocates of the constitution as it stood without amendment." [See III. Life of Samuel Adams.] Numerous evidences of this view could be given. One will suffice. Said General C. C. Pinckney, in the debate on ratification in South Carolina: No powers can be "in the general government but what are expressly granted to it. By delegating express powers, we certainly reserve to ourselves every power and right not mentioned in the constitution."

Successively, South Carolina, New Hampshire, Virginia, and New York joined Massachusetts in her demand for this great amendment. And it is more than probable that the general approval of it, and the "full confidence" in its being adopted, caused the acquiescence in, and the adoption of, the new system.

In the congress of 1789, resolutions proposing the amendments for the action of the states were passed, — the preamble setting forth that some of the states expressed, when they adopted the constitution, "a desire, in order to prevent misconstruction, or abuse of its powers, that further declaratory and restrictive clauses should be added;" and that "such clauses would tend to increase public confidence, and thereby help to the beneficent ends in view."

The Grand Result of the Movement may be stated thus: The charge that consolidation, or subordinating the states, was in the original instrument, was disproved. To make assurance doubly sure, that the government was to be always an agency of, and subordinate to, the states; to complete the harnessing and utilizing of the individual and collective *personnel* of the government; to emphasize their subjection to the law, and their inability to act without express and written warrant; and finally, to make coercion of the states, by their own subjects and agency, forever impossible, they — the said states — amended the constitution within the first few years of its history, as follows — thus putting the people's seal of reprobation on, and forever preventing, all legislative, military, and judicial forms of coercion of commonwealths: — Amendment IX. provides, that the enumeration in

the constitution of certain rights, shall not be construed to deny or disparage others *retained* by the people; Amendment X., that the powers not delegated to the united states, or prohibited therein to the states, are *reserved* to the states or people;[1] and Amendment XI., that there shall be no federal judicial coercion of a state at the suit of a citizen of any other state. [Please refer to Amendments IX., X., and XI.]

It is obvious that Amendment X. alone, in declaring that "all powers not delegated to the united states, are reserved," etc., shows that the several states that delegated must be now absolutely sovereign; that they collectively are the sole recipients and trustees of the powers delegated by the individual states; and finally, that the whole grand federal polity rests solely on sacred international faith — the highest political sanction that is earthly and human; as well as the most likely to endure — if men have the right and capacity for self-organization and self-government.

In closing this point, then, I beg leave to repeat, that **the fathers contemplated, and tried to forefend, the danger of the federal delegative authority increasing, to the control and final destruction of the states.** *Q. E. D.*

[1] An important part of the perverting interpretation I am exposing, is that which takes hold of the constitution with its profane hands, right at this point, and says that *the powers not delegated are reserved to the nation* — as if the thirteen organizations of people could severally ratify and delegate (as all the sacred records unequivocally say they did) and then and there, a nation of people, comprising the said "thirteen," could "*retain*" and "*reserve*" those powers of the said states which they, the said states, did not delegate. Of course this is intended as a deception, or it is a gross mistake. Referring to Appendix E for the original forms of the 10th Amendment, to show what the meaning and intent of the people was; what they supposed they were declaring; and what common sense teaches they did declare; I will state, as the result of my investigation and thought, that the conclusion of the said amendment, means as if it read — *reserved to the state governments respectively, or to the people of the states, who delegate the powers which are not reserved.* See the proposition of Massachusetts, on which all the subsequently ratifying states acted, a few paragraphs above.

CHAPTER III.

USURPATIONS TO BE TREATED AS NULLITIES.

POINT III. — **Federal acts, outside of delegated powers, were to be treated as nullities, and — if attempted to be enforced — resisted as usurpations.**

Said HAMILTON: "The laws of congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding." [II. Ell. Deb. 362.]

Said JUDGE PARSONS, "the celebrated chief justice," as Judge Story calls him: "An increase of power by usurpation is clearly a violation of the federal constitution." Again he said: "An act of usurpation is not obligatory; it is not law." And furthermore he said: the oath to support the constitution "obliges the officers of the several states" to oppose all such acts. And this great jurist and statesman contemplated opposition by arms, if necessary. [Ibid. 94.]

Said JUDGE IREDELL, afterwards supreme judge of the united states: "If congress, under pretence of executing one power, usurp another, they will violate the constitution;" and he further asserted that "a law of congress, not consistent with the constitution," would "not be binding on the people." [IV. Ibid. 179.]

MASSACHUSETTS, as usual, caps the climax — she and CONNECTICUT and RHODE ISLAND having, in 1814 — as sovereigns — declared that "*acts of congress, in violation of the constitution, are absolutely void!*"

From this doctrine there was no dissent among the fathers and the states, so that further quotations are not needed, though many pages might be given. Like any other agent, the moment it gets outside of its procuration on reserved ground, the federal government becomes a wrong-doer and trespasser. And, furthermore, it — being under oath — becomes perjured and deeply criminal. Hence, if there be no law for its restraint, it must be repelled *vi et armis*. And, indeed, Judge Parsons spoke of the resistance to be offered by the states as war! [II. Ell. Deb. 94.]

It is well to observe that in self-government, every citizen, official or private, has legal and political, as well as moral, duties, which he

must personally perform. His judgment and his conscience must decide each and every case presented for his action. His responsibility is individual here, just as much as it is in the hereafter. PRESIDENT JEFFERSON was right in his letter to the district attorney of New York, dated November 1, 1801, where he said: "*I* shall treat the sedition law as a nullity, wherever it comes in the way of *my* functions;" and PRESIDENT JACKSON was right in saying, he had sworn to obey the constitution as he understood it, and that where a sworn or other duty was to be done, his judgment and conscience were to be his guide — precedents only influencing his mind according to their character, weight, and applicability.

And this was PRESIDENT JOHNSON'S position, as discussed in his impeachment, that every official, and every citizen, has the right to refuse to obey any and every law, subject only to the danger of judgment and costs being given against him. And when a constitutional question is involved, it sometimes becomes a sacred duty to resist with lawful means, and — in extreme cases — by violence, especially in these times, when fraud and force are vitally attacking our most cherished institutions.

With peculiar cogency, Webster's words close the argument: "the constitution, to preserve itself," "lays its hand on individual conscience and individual duty." And the lofty phrase of the hero Jackson sounds in unison: "I swore to obey and protect the constitution *as I* [and not as others] understand it!"

The responsibility for the God-given right of self-government being used correctly, is in individuals, and they must resist, either personally or collectively, as need may be. In government, they only act in the latter capacity; but they have all power, and theirs is the *ultima ratio*. This same conscience, and the same instinct of self-preservation, must be the prompters and guides, in either personal or social action.

I conclude, then, **that federal acts outside of delegated powers were to be treated as nullities, and — if attempted to be enforced — resisted as usurpations.** *Q. E. D.*

CHAPTER IV.

NO FEDERAL COERCION OF STATES.

POINT IV. — **The federal government is not only without authority, but is actually prohibited, to coerce the state with arms, by legislation, or even judicially.**

The states possess sovereignty, that is, untrammelled will over their interest and destiny; and the union is not a hundred-armed Briareus, irresistibly grasping and holding the states together; for if it were, the states would not be free. Where the hand of power constrains a man or state to do or not to do, to stay or not to stay, freedom *pro tanto* is gone, and all of liberty will most certainly follow.

When the federal convention, desiring to make a sufficiently strong, and a self-sustaining government, was considering the kind of coercion necessary to enforce its powers, some of the members thoughtlessly suggested the idea of coercion against states. This was before the plan was adopted, of giving the federal government precisely the mode and means of exercising and enforcing jurisdiction on the individual citizens of states, that was already, and was to be, exercised by the state governments — that is, courts, sheriffs, and, if necessary, the *posse comitatus*, etc., it being considered by all, that the federal, like the state government, was a part of the people's agency of self-government.

When the original constitution, as completed by the convention of 1787, was ordained and established "between the states so [*i. e.* by conventions] ratifying the same," it was the universal understanding of the fathers, that the states were in no wise subject to it. "This constitution does not coerce sovereign bodies — states," said Ellsworth, and all agreed with him. They knew the said states "*delegated*" the only powers put in the instrument, and "*reserved*" and "*retained*" all others out of it; and it could not be supposed that their own powers, their own members and subjects, and their own means, could be used to constrain and subjugate their own wills — the sovereign wills that delegated the powers.

What say the Fathers on Federal Coercion? — Now let us see what the leading fathers said on the subject, to induce the people to ratify the compact.

The idea of Noah Webster and others, of the states giving a federal coercion over their citizens, like that which their respective home governments exercised, had been adopted in the convention — the alternative being coercion of states as bodies. Hence the following expressions of the fathers: —

Mr. Madison (whom I have quoted *supra*, as saying, with the concurrence of everybody of note, that the constitution was made by "the people as composing thirteen sovereignties," and that "the states are regarded as distinct and independent sovereigns . . . by the constitution proposed"), declared, in reference to the proposed coercion: "An attempt to coerce states would be a dissolution of all previous compacts. A union of states, containing such an ingredient, seems to provide for its own destruction." Again: "Any government formed on the supposed practicability of using force against the unconstitutional proceedings of states, would prove visionary and fallacious." [Fed. 15, 16, 20; V. Ell. Deb. 171; III. Ibid. *passim.*]

Hamilton, the advocate *par excellence* of a strong government, repeatedly expressed himself against such an idea. Said he: "To coerce states is one of the maddest projects ever devised. . . . Here is a nation at war against itself. Can any reasonable man be well disposed towards a government which makes war and carnage the only means of supporting itself — a government that can exist only by the sword? This single consideration should be sufficient to dispose every peaceable citizen against such a government. . . . What, sir, is the cure for this great evil? Nothing, but *to enable the national laws to operate on individuals in the same manner as those of states do.*" [II. Ibid. 233.]

Edmund Randolph, governor of Virginia, and attorney-general of the administration of Washington, uttered the following in the Virginia convention: "But although coercion is an indispensable ingredient, it ought not to be directed against a state as a state, it being impossible to attempt it, except by blockading the trade of the delinquent, or carrying war into its bowels . . . and [this] might drive the proscribed state into the desperate resolve of inviting foreign alliances. . . . But how shall we speak of the intrusion of troops? Shall we arm citizens against citizens, and habituate them to shed kindred blood? Shall we risk the inflicting of wounds which will generate a rancor never to be subdued? Would there be no room to fear that an army accustomed to fight for the establishment of authority, would salute an emperor of their own? Let us not bring these

things into jeopardy. Let us rather substitute *the same process by which individuals are compelled to contribute to the government of their own states.*" [I. Ibid. 385; III. 117.]

Said OLIVER ELLSWORTH, afterwards chief justice, appointed by Washington: "Small states must possess the power of self-defence, or be ruined." Speaking further of possible antagonisms between the states and the federal government, and the power vested in the latter to enforce its laws, he said: "This constitution does not attempt to coerce sovereign bodies, states in their political capacities. No coercion is applicable to such bodies but that of an armed force. . . . But *legal coercion singles out the guilty individual, and punishes him for breaking the laws of the union.*" [II. Ibid. 197.]

WILLIAM R. DAVIE, one of the leading statesmen of North Carolina, and a member of both federal and state conventions, said, in the latter: "I know of but two ways in which the laws can be executed by any government. The first mode is coercion by military force, and the second is *coercion through the judiciary.*" He concludes: "I suppose no man will support the former, and the power of the latter is co-extensive with the legislative." [IV. Ibid. 155; also 21.]

Said JUDGE SPENCER, in the same convention: "*The laws of the general government must operate on individuals . . . as laws could not be put in execution against states* without the agency of the sword, which instead of answering the ends of government, would destroy it." [IV. Ibid. 163.]

Said RUFUS KING, in the convention of Massachusetts: "*Laws to be effective, must not be laid on states, but on individuals.*" He further said he knew of "no method to compel delinquent states." [II. Ibid. 55–6.]

Other authorities might be quoted, but there was no word of dissent anywhere, and these extracts show the views of all. There was to be no coercion of the political will of states — no matter what that will might decide — such coercion being inconsistent with the agreed plan of a voluntary federation, founded solely on amity, mutual interest, and the hope of effecting safety by union. Not only was no power of constraint or restraint given, but all the powers are delegated professedly to "provide for" "*defence*," and not for *attack*, of "the [communities of] people."

It is as true now, as it was when Madison, Hamilton, Ellsworth, Randolph, King, and others, asserted it as above, that any attempt to coerce a state is war. Nay, more, as it involves the use of force by the creature against the creator; by the citizen against the state of which he is a member; and by the subject against the sovereign, coercion of the state, by the government, must be treasonable in its nature.

The great Aim of the Fathers was to avoid Coercing the States. — It is evident then, that the commonwealths, while determined to continue their federalized condition, aimed to change their federal agency to one empowered by them to operate on, and coerce their individual citizens, just as their respective domestic governments did. This is the very point of all the above expressions; and number 20 of the Federalist — the joint production of Hamilton and Madison — should be added to them, as remarkable and crowning proof: "A sovereignty over sovereigns, a government over governments, a legislation for communities as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting *violence* in place of *law*, or the destructive coercion of the sword, in the place of the mild and salutary coercion of the magistracy." This, with the following from number 15 [Ibid.], written by Hamilton, should end controversy: "*The great and radical vice* in the construction of the existing confederation, is in the principle of *legislation for states* or governments, in their corporative or collective capacities, and as *contradistinguished from the individuals of whom they consist.*" By reading this and the 16th number of the Federalist, it will be seen that the great aim was to do away with the great "vice."

Concisely, this was the fathers' view: the federal institution now proposed does not coerce the states, for they are sovereign; and the said agency, with their authority, coerces their subjects. The great fear, at that time, was, that if this change was not made, so that the federal government would be able to execute its powers, the federation might be tempted or provoked, some time, to coerce a delinquent state. Even Mr. Jefferson had, before 1787, said, in substance, We will not get all the states promptly to comply with federal requisitions, till the confederacy shows her teeth, and sends frigates to their ports with shotted guns.

Hence we see that the great change aimed at, was not "a change from a federation to another system," as Mr. Webster and the federal supreme court assert; but the federation and the federal agency were continued, and the change consisted in making the latter much more efficient, by adding executive and judicial, to legislative powers, and enabling it to operate directly and coercively on the citizens of all the states. And hence we also see how fallacious another of Mr. Webster's assertions is, to wit, that "so far as the constitution goes, so far state sovereignty is effectually [*i. e.* with right of coercion] controlled."

Even Judicial Coercion of States not intended. — Not only was legislative coercion, and that *vi et armis*, prohibited and guarded

against, but even judicial coercion was intended to be excluded from the constitution; and as to the latter, the compact was amended, as we have seen, to make assurance doubly sure.

JUDGE MARSHALL, speaking on the subject, in the Virginia ratifying convention, thought that even under the original provision, "a state would not be called at the bar of the federal court;" for, said he, "it is not rational to suppose that *the sovereign power* should be dragged before a court;" but he suggested amendment, to remove any possible doubt. [III. Ell. Deb. 555.]

GEORGE MASON said, in the same convention: "Is this state to be brought to the bar of justice, like a delinquent individual? Is the sovereignty of the state to be arraigned like a culprit or private offender? . . . What is to be done if a judgment be obtained against a state? Will you issue a *fieri facias?* It would be ludicrous to say you could put the state's body in jail. How is the judgment then to be enforced? A power which cannot be executed, ought not to be granted." [Ibid. 527.]

It was to Mason and Henry that Marshall replied as above. MADISON joined him as follows: "It is not in the power of individuals to call any state into court." He further said that if the clause "be found improper, it will be amended." [Ibid. 533.]

Not only was no such power given, but no means were provided for the execution of such power. And, as George Mason more than intimated, a law without a sanction, or a power unaccompanied by any provision for its enforcement, is practically little better than a nonentity, and surely cannot be implied.

It should be here explained, that, as to the jurisdiction of those differences between the states, which could assume the form of suits, the said states agreed, in the constitution, to submit them to the umpire — *i. e.* the supreme court — they created; and their good faith was pledged to abide by and effectuate the judgments.

The federal judiciary, of which the supreme court is a part, is entirely the creation of the states, springing from, and existing by, their will; and it is precisely as if so many monarchs had appointed a commission of wise subjects, to decide disputes between them by reason, law, and justice.

Massachusetts again in the Lead. — THE OLD BAY STATE again shone resplendent as the champion of state sovereignty, before this matter of preventing judicial coercion was finally settled. As suits were commenced against states in the federal courts, looking to judicial coercion, an agitation was begun by her, notably led by Governor James Sullivan; and it spread and prospered, till the Amendment XI. was adopted. In the case of Chisholm *vs.* Georgia, in 1793, the fed-

eral supreme court decided such suits to be constitutional; and Massachusetts was cited to appear in a federal court by William Vassall, a refugee loyalist, suing for his confiscated estates.

Thereupon, Governor John Hancock convened the legislature, which referred to the above decision, and — "Resolved, that a power claimed, or which may be claimed, of compelling a state to be made defendant in any court of the united states, at the suit of an individual or individuals, is, in the opinion of this legislature, unnecessary and inexpedient, and, in its exercise, dangerous to the peace, safety, and independence of the several states, and repugnant to the first principles of a federal government." And she instructs her delegation in congress to proceed at once to obtain amendments, to "remove any clause or article of the said constitution, which may be construed to imply a decision, that a state is compelled to answer, in any suit, by an individual or individuals, in any court of the united states."

The Grand Result Massachusetts led to. — The result of the great movement, led by Massachusetts, was that the sovereigns ordained the 11th Amendment, providing that the federal "judicial power" "shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the united states, by citizens of another state, or by citizens or subjects of any foreign state."

Gouverneur Morris afterwards said, that while the most of the amendments were mere verbiage, "the one that a state should not be made amenable to justice, through the courts, was, perhaps, proper;" as it was hardly "rational policy," "to bring a state into a court of justice," "for it would not be easy to coerce a corporation such as New York." [Letter to R. Walsh, Feb. 5, 1811.]

If there was no power of coercion, there was, of course, perfect free will of states.

Perjured Usurpation and Treason. — It seems certain, from the foregoing authorities, 1st. That the right to coerce states is not in, but is prohibited by, the sacred compact; 2d. That the exercise of such power must be perjured usurpation; 3d. That as far as the federal functionaries who coerce, are members and subjects of the states coerced, they commit treason; and those of the other states who aid them, commit a federal crime — so to speak — but little less atrocious.

I repeat, then, that **the federal government is not only without authority, but is actually prohibited, to coerce the state with arms, by legislation, or even judicially.** *Q. E. D.*

CHAPTER V.

SELF-DEFENCE OF STATES.

POINT V. — The fathers considered that **the states in the union have the unlimited right of self-defence, by withdrawing delegations, and recalling their citizens from federal offices; by dissociation; and by fighting, if need be, the federal government.**

The highest and most conspicuous authority — that which is most conclusive on the right to any mode of defence a state may choose, against the aggressions or menaces of power, and against federal coercion — is the states themselves. Not only did they solemnly compact, and pledge faith and guaranty with one another, that each state was "sovereign, free, and independent," at the very moment they, as thus characterized, made the federal constitution; but they, the said states, did then have — and they have ever since had — in their respective constitutions the solemn declaration that "all political power is inherent" in them. Not a part, and not in any qualified manner, but all — absolutely all. [See the state constitutions generally.]

Surely, surely, if "all political power" is inherent in these communities, they could take the political step of separating or withdrawing their delegations of power from the federal government; and there could be no political authority out of them, to coerce them against their will, especially as they have made no expression to that effect. It is quite obvious, that if there was any political power out of them that they could not recall at will, they were neither sovereigns nor free states. Passing by this, let us see

What the Fathers say on Self-defence of States. — Said DR. JOHNSON, one of the most eminent lawyers and statesmen of Connecticut, in the federal convention: "If states as such are to exist, they ought to have the means of defending themselves." [V. Ell. Deb. 255.]

Said OLIVER ELLSWORTH — afterwards the chief justice of the united states — in the same convention: "The power of self-defence is *essential* to the small states. Nature has given it to the smallest insect of the creation." [Ibid. 260.]

Said JOHN MARSHALL — afterwards the celebrated chief justice of the united states — in the Virginia convention: "We [*i. e.* the people of Virginia] are threatened with the loss of our liberties by the possible abuse of power, notwithstanding the maxim that *those who give may take away.* It is *the people that give power,* AND CAN TAKE IT BACK. What shall restrain them? They are *the masters* who gave it, and *of whom the servants hold it.* . . . The government is not supported by force, but *depending on our* FREE-WILL. When experience shall show us any inconvenience, *we* can then correct it." [III. Ibid. 233.]

Said CHANCELLOR PENDLETON, the president of said convention, on the same occasion: "Where is the cause of alarm? We, the people [of Virginia], possessing all power, form a government, which we think will secure happiness. And suppose, in adopting this plan, we should be mistaken in the end. . . . In the same plan we point out an easy and quiet method of reforming what may be found amiss. But, say gentlemen, we have put the introduction of that method in the hands of our servants, who will interrupt it from motives of self-interest. What then? *We will assemble in convention* [of Virginia, of course], WHOLLY RECALL OUR DELEGATED POWERS, or reform them, so as to prevent such abuse, and punish those servants who have perverted powers, designed for our happiness, to their own emolument." [Ibid. 37.]

MR. MADISON expressed the same views. So did George Nicholas and others. No one opposed them. And what is most decisive is, that, through this convention, the people of Virginia did, as a sovereign commonwealth, accompany the ratification with this solemn protest: "that *the powers granted* under the constitution, being *derived from the people* of the united states [will] be RESUMED by them, whensoever the same shall be perverted to their injury or oppression." [Ibid. 656.]

Of right, she could only speak for herself in this matter, which she did, by uttering a general principle. As the delegated power came, by the ordinance of ratification, from each state, the withdrawal must be by each, and this is the only possible meaning of "resumed," or "reassumed," as New York expressed it; and it would be by virtue of an authority superior to the thing made — an authority *above any constitution or government* — the *jus summa imperii.* There can be no "constitutional right to secede." Such right must be inherent, characteristic, and inalienable, as well as above the constitution. In those days nobody denied the right. It was an essential attribute of state sovereignty; which was supposed to be unquestionable. But let us pass on.

JAMES IREDELL, afterwards of the supreme court of the union, in the

convention of North Carolina, after saying that the senate was required "to preserve completely the sovereignty of the states," said: "Those in power are their [the people's] servants and agents, and the people, without their consent, may new-model their government, when they think proper. . . . Let them [the people] be watchful over their rulers. . . . Should their liberties be in danger . . . they have, thank God, an ultimate remedy. THAT POWER WHICH CREATED THE GOVERNMENT CAN DESTROY IT. . . . If the government want amendments, they can be made in the mode prescribed in it." [IV. Ibid. 9, 130.]

Here is the right of secession again — brought forward too as an argument in favor of adoption. No one questioned it!

ROGER SHERMAN, one of the great statesmen of Connecticut, wrote to John Adams, July 20, 1789, as follows: "I fully agree with you, sir, that it is optional with the people of a state, to establish any form of government they please — to vest the powers in one, a few, or many — and for a limited or unlimited time; and the individuals of the state will be bound to yield obedience to such government WHILE IT CONTINUES; but I am also of opinion that THEY MAY ALTER their frame of government WHEN THEY PLEASE, any former act of theirs, however explicit, to the contrary notwithstanding."

JOHN DICKINSON, after recognizing the commonwealths of people as the several and sovereign authorities constituting the new system, and intending to act under it, puts hypothetically the case of "bad administration," and asks: "What is then to be done? The answer," he continues, "is instantly found; let the *fasces* be lowered before the *supreme sovereignty of the people.* It is their duty to watch, and their right to take care, that the constitution be preserved: or, in the Roman phrase, on perilous occasions, to provide that the republic receives no damage." [See II. Pol. Writings John Dickinson.]

Do the above authorities favor the idea that the commonwealth was, by its own compact, tied helplessly under governmental sovereignty?

And even JAMES WILSON, the leading statesman of Pennsylvania, — afterwards one of the federal supreme judges, — advances the same idea, as was unavoidable from the nature of things. He asserted that the absolute sovereignty never "goes from the people," but "remains in them after a constitution is made"; that making constitutions is "dispensing such portions of power" as "the public welfare" requires; that ratifying the federal constitution was "delegating federal powers"; and that the general government is "a federal body of our own creation." And, said he: The constitution "receives its political existence from their [the people's] authority; they ordain and establish. What is the necessary consequence? THOSE WHO ORDAIN

AND ESTABLISH HAVE THE POWER, if they think proper, TO REPEAL AND ANNUL." [II. Ell. Deb. 435.]

This of itself, taken in connection with the fact that Pennsylvania was then "sovereign and independent," and as such was then in convention determining her will for or against delegating or dispensing portions of her power to a federal government, ought to convince any one that the sovereignty of the states, and the necessary right of secession, were taken for granted, and were intended to be preserved.

Let us now introduce, as testimony on this all-important point of the right of self-defence in states,

The ancient faith of Massachusetts, as set forth by her chosen sons in her great ratifying convention. Such views as the above met therein no dissent whatever.

REV. SAMUEL STILLMAN said: "After all, if this constitution were as perfect as the sacred volume is, it would not secure the liberties of the people, unless they watched their own liberties. Nothing written on paper will do this. . . . Should the general government become so lost to all sense of honor, and the freedom of the people, as to attempt to enslave them, they, who are the descendants of a race of men who have dethroned kings, would make an American congress tremble; strip them of their public honors, and reduce them to the lowest state of degradation." [II. Ell. Deb. 169.]

JUDGE PARSONS, afterwards "the celebrated chief justice of Massachusetts," took the same view in the convention. Speaking of the federal government, he said: —

"They are the servants of the people, vested with delegated powers; . . . in this case the people divest themselves of nothing." Again he said: "An increase of powers by usurpation is clearly a violation of the federal constitution;" and the oath to support the instrument "obliges the officers of the several states" to oppose it. He also spoke of another check, founded on the nature of the union, superior to all the parchment checks that can be invented. . . .

"If there should be a usurpation, it will be upon *thirteen legislatures* completely organized, possessed of the confidence of the people, and having the means, as well as inclination, *successfully to oppose it.*" And he characterized this as an appeal to arms! [II. Ell. Deb. 94.]

Said FISHER AMES, on the same occasion: "*The state governments* represent the wishes, and feelings, and local interests of the people. They *will afford a shelter against the abuse of power; and will be the natural avengers of our violated rights.*" [II. Ell. Deb. 46.] What! can the states fight the federal government, if it attempt coercion?

This treason comes from Massachusetts! It is true and sound principle.

Similar Treason from Virginia. — Said EDMUND RANDOLPH, the then governor of Virginia, afterwards attorney-general, and secretary of state under Washington's administration, in the Virginia ratifying convention: Congress cannot "possibly assume any other power but what is contained in the constitution, without absolute usurpation. Another security is, that if they attempt such a usurpation, the influence of *the state governments* will nip it in the bud of hope. The government will be cautiously watched, and the smallest assumption of power will be *sounded in alarm to the people*, and followed by *bold and active opposition*." [III. Ell. Deb. 206–7.]

MADISON not only often spoke of the states as sovereigns, and superior to the government they formed, but as possessing the absolute right of self-defence. For instance, he said Virginia acceded to the compact as a "sovereign state," and that the said compact "was to be binding on the people of the state only by their own separate assent." And in speaking, in the Virginia convention, upon the federal provision for organizing, arming, and disciplining the militia, he said: "If we [the people of Virginia] be dissatisfied with the national government, *if we should choose to renounce it*, this [the trained militia] is an additional safeguard to our defence." [Ibid. 414.] This means nothing, if it does not mean that we can renounce the national government if we choose, and that the militia is ours [*i. e.* the people of Virginia's] for defence against all comers. Indeed, both Madison and Marshall stated in substance that the militia, of original and paramount right, belonged to, and could be controlled by, the states.

Hamilton's Testimony. — When Hamilton and Madison concur, it matters little what others say; but none of the fathers dissented.

Said HAMILTON, in No. 28 of the Federalist: "*It may safely be received as an axiom in our political system, that the state governments will, in all possible contingencies, afford complete security against invasions of the public liberty by national authority. In a confederacy, the people, without exaggeration, may be said to be entirely masters of their own fate.*" "The constitution," said he, in the New York convention, "ought not to be so formed as to prevent the states from providing for their own existence, and I maintain that it is not so formed." And in No. 26 of the Federalist he said: "*The state legislatures*" are to be the "guardians of the rights of the citizens against encroachments of the general government, . . . to sound the alarm to the people, and not only to be *the voice* but, if necessary, *the arm of their discontent*." And he had previously said in the New York assembly (February 19, 1787): "Each state possesses in itself full powers of

government, and can at once, in a regular and constitutional way, take measures for the preservation of its rights."

Mr. Rives, in his Life of Madison (Vol. II. p. 501), after quoting Hamilton's "axiom in our political system," that "the state governments, in all possible contingencies, afford complete security against invasions of the public liberty by national authority," proceeds to say, what every investigator knows to be true, that "this was among the considerations most dwelt on by writers of the Federalist, to recommend the constitution to the favor and confidence of the people."

The last Reasoning of the States on the Subject. — We see, then, that the states, as individuals, not less distinct than so many men, associated themselves in their second, and, as they expressed it, "*more perfect* union." They, *ipso facto*, established their general agency for self-ruling and self-defence. The instinct and right of self-preservation exists in each, as an inherent and inseparable part of its nature. Now, had these actors respectively any less desire, aim, and duty of self-preservation, after associating? No! all the fathers recognized, not only the right, but the duty of the state, when it deems its existence, its sovereignty, or the essential rights of itself or its people, endangered by the acts or menaces of the federal government, to oppose them; and, if the said government persist, to do it with arms! Why? Because the state is the people, and the only people in the land organized into a political commonwealth or corporation, and it has all original jurisdiction over every possible matter of life, liberty, and property — a jurisdiction coupled with the responsibility of protection and defence; and if the federal "substitutes and agents," by virtue of the small modicum of derivative authority delegated to them, forget their *derivative* and "act as from *original* power" — transcending their bounds, and menacing the liberties of the people, the state must interpose its ægis and say: "You were sent forth as subjects, delegates, agents, and servants; if you come back dominating as a sovereign, a principal, or a master, and using coercion to effect your will and defeat mine, I must meet you with arms!"

Beyond question, then, not only has the federal agency no right to coerce its makers, as I have heretofore shown, but **these makers have, as against it, unlimited right of self-defence, by withdrawing delegations, and recalling their citizens from federal offices; by dissociation; and by fighting, if need be, the federal government.** *Q. E. D.*

CHAPTER VI.

TRUE LOYALTY IS FIDELITY TO THE STATE.

POINT VI. — **To defend the state with arms, in obedience to her will, is the duty of the member or citizen, and is not treason in any sense; but is true loyalty.**

Several corollaries of vital importance flow from this point, which it is well here to state: —

1. That the primary devotion of the citizen is, and ought to be, to his state, so that in a conflict, he would cleave to her against the federal government.

2. That the citizens are the states, and the only citizenship is of the states. Necessarily the only allegiance is to states. Both federal and state constitutions prove these facts.

3. That the state, being the citizens thereof, and the arms-bearing citizens being the military force, the state has the original and supreme right — coupled with the duty — to control and use the said force for her defence.

4. That citizens, by defending the state, are defending themselves — both individually and collectively — as required by Nature's first, greatest, and best law — the law of self-preservation.

5. That the citizens, as organized, being, in reality, the governing authority, a citizen cannot commit treason, if he obey the commonwealth, this being the very obligation of the social compact.

6. And, finally, that the federal constitution proves the state to be the sole object of treason.

A few Explanatory Remarks. — We must keep it in mind that, "the state" and the "citizens thereof," are convertible phrases, the citizens being the state. They are the republic, *i. e.* an organized, self-governing commonwealth. The federal agency's only right to the obedience of the citizen is delegated to it by the states. Obeying the federal government, therefore, is obeying its creators and sovereigns, the states; each citizen obeying because the sovereign, whose subject he is, commands it. In a word, the citizens, as individuals, obey themselves, as commonwealths — this federal contrivance being

merely their agency for self-government in general matters, just as the state government is their agency for self-government in domestic affairs. This is republicanism.

These remarks will enable us the more readily to appreciate the following considerations, which will be seen to be those of the fathers themselves.

THE STATE IS THE SOLE OBJECT OF PATRIOTISM.

1. **The fathers consider that the primary devotion of the citizen would be, and ought to be, to his state; so that in case of conflict, he would cleave to her against the federal government.**

This natural devotion of citizens to their states, was the fathers' strongest ground of argument against the danger of federal aggression. It was treated of by them, as a natural and controlling sentiment of the citizen towards the body he was an integral part of, and which the social compact bound him to love, honor, and obey. They knew that the said commonwealth included and secured all the citizen held dear, and that patriotism and loyalty were consonant, if not identical, with his self-love, his affection for his family and kindred, and his regard for his home treasures, his friends, his neighbors, his fellow-citizens, and the palladium that protects them all — the state! These feelings are the necessary elements of patriotism; while the federal government, being at best only a political arrangement, or agency of the states, which are identical with the said citizens, could only be an object of respect and obedience to a given citizen, as long as his commonwealth willed him to obey it.

Let the Fathers express the Glorious Sentiment. — Said JOHN DICKINSON: "The trustees or servants of the several states will not dare, if they retain their senses, to violate that independent sovereignty of their respective states — that JUSTLY DARLING OBJECT OF AMERICAN AFFECTIONS, to which they are responsible." These sentiments were expressly approved by Washington. Said HAMILTON: "There are certain social principles in human nature from which we may draw the most solid conclusions, with respect to the conduct of individuals and communities. We love our families more than our neighbors. We love our neighbors more than our countrymen in general. The human affections, like the solar heat, lose their intensity as they depart from the centre, and become languid in proportion to the expansion of the circle on which they act. On these principles, the attachment of the individual will be first and forever secured by the state government." And he believed the states to possess unlimited right of self-defence. Said MARSHALL, in reply to the argument that by giving a certain power to the federal government, the states might

impair their power of self-defence: "Does not every man feel a refutation of the argument in his own breast?" — that is to say — Is not self-defence the first law of nature? This right, as well as the right of withdrawing delegated power by the states, he thought unlimited. Said ELLSWORTH: "I turn my eyes to the states for the preservation of my rights. . . . The greatest happiness I expect in this life, I can derive from these alone. This happiness depends on their existence, as much as a new-born infant on its mother for nourishment." He considered the right of self-defence in states as "essential" and unlimited.

Every sentiment of the patriotic age was in unison. Not a soul of the fathers ever dreamed that any combination of the states, or portion of the people, could legally use the federal government, and its vested power and war means, to conquer other states, and to punish the citizens of these for treason. Not a soul of them ever supposed that defending one's state was traitorous. State sovereignty — no coercion of states — unlimited state defence, were the ideas of all.

Governor EDMUND RANDOLPH, in the Virginia ratifying convention, summed up the whole glorious theory of true loyalty, as follows: After saying that the rights of the states are "guarded by the provisions just recited. If you say," continued he, "that, notwithstanding the most express restrictions, they [the government] may sacrifice the rights of the states, then you establish another doctrine — that the creature can destroy the creator, which is the most absurd and ridiculous of all doctrines." [III. Ell. Deb. 363.]

In other words, it is absurd and ridiculous to say that the general government can coerce states; that the states cannot defend themselves; or that loyalty is due to the created agency, instead of the sovereign creators. As Marshall says — "Every man feels a refutation of the argument in his own breast."

I conclude, then, that **the loyalty of a citizen is due, and that it will be given, to his state under all circumstances.** *Q. E. D.*

CHAPTER VII.

AMERICAN CITIZENSHIP AND ALLEGIANCE.

2. **THE citizens are the state; the only citizenship is of states; and necessarily the only allegiance is to states.** These are the ideas of both federal and state constitutions, as well as of the fathers.

It is beyond question that the only citizenship originally existent in the states that joined themselves in union, was citizenship of a state; and citizenship of, and allegiance to, a nation, or a national (or federal) government, was never provided for, if it was even thought of. This is quite evident from the following clauses: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." [Art. IV. § 2.] "The judicial power of the united states shall extend . . . to controversies between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects." [Art. III. § 2. See also Amendment XI.] If there were any citizens of a nation, they were not recognized or provided for. There were no other citizens than "the citizens of each state," and their citizenship and allegiance was never transferred. The reason is quite obvious. States were the constituents of the federal system; and these very citizens were the states — each being a member, an integral part of his state; and if such transfer had taken place, there would have been no more "citizens of each state," and it would thus have contradicted and defeated the constitution itself; there being no provision for any other citizens than those of a state, who must, of course, remain untransferred, in order to answer to these descriptions and provisions as to "the citizens of each state," "citizens of different states," etc.

We see, then, that President Jackson's statement in his celebrated proclamation of 1832 — that "*the allegiance of their citizens was transferred to the government of the united states*" by their respective states, is absolutely untrue, unconstitutional, and absurd. The truth is, the proclamation against South Carolina was for an exigency of a

politician and his party, and the subsequent explanation in the Globe was for another. Jackson was one of the most illustrious of great Americans. Was he not unwittingly one of the most efficient of the destroyers of American institutional liberty?

False Naturalization. — But there is a provision, which some have thought, or pretended to think, referred to, or provided for, another citizenship, when really, taken with the above clauses, it is the strongest possible evidence to the contrary. "The congress shall have power [not to naturalize, but] to establish a uniform *rule* of naturalization, and uniform *laws* on the subject of bankruptcies throughout the united states." As to citizenship, the object of the clause was to produce uniformity and homogeneousness throughout the states. New "citizens of each state" were to be made of immigrants, and as the thirteen states were the necessary actors in naturalizing, and aimed at uniformity, they "delegated" the power to the congress they created, "to establish a uniform rule," by which, of course, they obligated themselves to act. States were the only authorities that could endow foreigners with all civil rights, so as to make them equal to native-born citizens — which is the object of naturalization — and at the same time protect them in all the civil rights given; for these new citizens were to become their members and subjects, and their machinery of government includes the only courts that have plenary jurisdiction over all the civil rights of citizens.

But though this is the plain and obvious meaning, congress — so prone is power to magnify itself — early began the "change," as Burke phrases it, "from an immediate state of procuration and delegation, to a course of acting as from original power"; and took the exclusive jurisdiction of the whole subject; acted as the sovereign naturalizing authority, and secured allegiance of the new citizens to the general government, thus making a second class of citizens, and defeating the very uniformity the two clauses quoted above were intended to produce. One class was the whole body of original citizens and their descendants, whose allegiance to the state was never changed; and the other comprised such foreigners as, being naturalized by law of congress, swore allegiance to a pseudo-sovereignty, and became members or citizens of a supposititious nation.[1]

If any one doubt this view, let him answer when, where, how, and to whom the allegiance was changed from the state. Where is the record of such change? He will see, the moment he attempts an answer, that the claim of allegiance for the federal agency is false and

[1] A singular mistake was made by the confederate constitution-makers — considering that they seceded to save statehood — in giving the confederate congress the power "to make [not "a uniform rule," but] uniform *laws* of naturalization."

preposterous. There could be no allegiance to those who at best were "representatives," "delegates," "trustees," "substitutes," "agents," "servants," as all the fathers invariably called them, and as they have always been characterized by the states and people.

Let the States testify on Citizenship. — The evidence of the following states is conclusive, that they never thought of the transfer of the very integers of which they are entirely and exclusively composed — their citizens — to their agency of government. Self-preservation was their first law, and to keep the allegiance of their constituent members was a *sine qua non*.

MAINE, in her constitution of 1819, declares that "every citizen may freely speak, write, and publish his sentiments," etc., and that "every citizen has the right to keep and bear arms," etc.

MASSACHUSETTS, in her present constitution, says, "every subject of the commonwealth" has a right to redress for all injuries and wrongs; and that "every male citizen" of the state (*i. e.* "subject of the commonwealth"), possessing certain qualifications, is entitled to a vote.

NEW HAMPSHIRE — constitution of 1792 — declares that, "every citizen of this state is entitled," etc.

VERMONT, in her constitution, calls her native citizens "natural born subjects of this state."

CONNECTICUT — constitution of 1818 — declares that, "every citizen has a right to bear arms in defence of himself and the state."

NEW YORK — constitution of 1846 — declares that "no authority can, on any pretence whatever, be exercised over the citizens of this state, but such as is, or shall be, derived from, and granted by, the people of this state;" and that "no member of this state shall be deprived of life, liberty, or property, without due process of law."

PENNSYLVANIA — constitution of 1790 — declares that the voting and holding of office shall only be by citizens of the state; and that "the right of the citizens to bear arms in defence of themselves and the state, shall not be questioned."

MARYLAND — constitution of 1801 — declares that "every free white male citizen of this state, and no other, above twenty-one years of age . . . shall have a right of suffrage," etc.

SOUTH CAROLINA — constitution of 1803 — provides that every voter must be "a citizen of this state."

See also the constitutions of GEORGIA, 1798; KENTUCKY, 1799; OHIO, 1802; INDIANA, 1816. Also the constitutions of Virginia, North Carolina, Delaware, Illinois, and others.

Several of the constitutions contain a clause similar to the following in that of Illinois, in 1828, and perhaps now: If, when the sense of

the people shall be taken, as to holding a convention to change the organic law, "it shall appear that a majority of all *the citizens of the state* . . . have voted for a convention," the general assembly shall call one.

For further information on this subject, see generally the original state constitutions. Some modern ones may be framed on President Jackson's mischievous idea of a "transfer of citizenship to the government of the united states," for it is not uncommon in these bad and sad days, for ignorance and wickedness to accomplish, through organic laws, what force and fraud are constantly doing in spite of them.[1]

Testimony of the States on Allegiance. — As the only citizenship is in the state, the only allegiance is due to it. We have no king or prince, and no tie of allegiance that is not in the social compact forming the republic; and it is remarkable and conclusive that the only constitutional declarations and claims of allegiance in the united states, are by states, there being no such claim in the federal compact, either expressly or by implication. In many state constitutions the claim of allegiance is found in juxtaposition with the sovereignty, citizenship, and treason clauses.

Massachusetts, the great original exponent of, and stickler for, state sovereignty in the union, exacts the following oath of allegiance from all her officers: "I, A. B., do solemnly swear that *I will bear true faith and allegiance to the commonwealth of Massachusetts*, and will support the constitution thereof. So help me God."

New Hampshire has a similar oath.

[1] A democratic caucus of congressmen is said to have "resolved" at Washington, two or three years ago (probably as a guess at the meaning of Amendment XIV.), "that the government of the united states and the government of the several states are distinct, and *each has citizens of its own, who owe it allegiance*;" that is to say, the citizens do not belong to the states or the nation, but to the governments thereof; and they owe their allegiance to the said agencies, and not to the principals and sovereigns — the people. If this statement be not the *reductio ad absurdum*, the entire baselessness of it becomes apparent when we reflect that Amendment XIV. was not purposed to change the political and civil *status* of thirty odd millions of self-organized and self-governing people, so as to make them citizens of, and allegiant to, governmental agencies, instead of the collective form of themselves, but simply aimed to *citizenize the negroes*, and provide for them in their new character. So that when the said amendment says the people are citizens of the united states, and of the states, it repeats the phrases of the original constitution, — simply reversing their order — and, in effect, reiterates "the supreme law" that "the people" (now meaning by that expression *blacks as well as whites*) are *citizens of different states* [Art. III. § 2], with the right to "all privileges and immunities of citizens in the *several states*" [Art. IV. § 2] to which they may go.

The flagrantly revolutionary character of this "expounding" will be realized in studying the diagram and explanation on pp. 308, 309, *supra*, and the extract from No. 46 of the Federalist, in Appendix D. It will be seen that these expounders — as Madison said of their prototypes — "LOSE SIGHT OF THE PEOPLE!"

VERMONT requires "every officer, whether judicial, executive, or military, to take and subscribe the following oath or affirmation of allegiance to this state" (then follows the form). She further declared, in her constitution of 1793, that "every person of good character, coming to settle in the state," may acquire and hold real property, and have "all rights of a natural-born *subject of this state*," after "taking an oath or affirmation of allegiance to the same."

KENTUCKY, in her constitution of 1799, imposes the following oath of allegiance on all her officers: "I do solemnly swear that I will be faithful and true to the commonwealth of Kentucky so long as I continue a citizen thereof."

GEORGIA, in her constitution of 1798, required all officers to swear to observe true faith and allegiance to the same.

MARYLAND has, in her constitution, the following oath for her officers; "I, A. B., do swear . . . that I will be faithful and bear true allegiance to the state of Maryland."

Other constitutions could be cited, but these will suffice.

I will observe, *en passant*, that some of the later constitutions require the official citizen to swear to support both the federal and the state constitutions; but this is none the less an oath of allegiance to the state, both constitutions being her fundamental laws.

These quotations show that the union was formed with full evidence in the very organic laws of the states forming it, that citizenship and allegiance belong alone to the states, which is precisely what the federal compact itself proves, as heretofore shown. Nay more, as Vermont and Kentucky were admitted in 1793 and 1799 with the provisions concerning allegiance just quoted, all the states (*i. e.* all the people), as well as the federal government, are concluded against denying that the allegiance of a citizen is solely due to his state.

And all these state constitutions contain a treason clause which is just as applicable to a citizen fighting for and aiding the "Union" against his state, as it is for his doing so for any other assailant. This will be conclusively shown further along.

Furthermore, the obligation of the oath to support and defend the constitution binds every federal officer to act on the idea that citizenship belongs, and allegiance is due, to states; not only because the said constitution declares the citizen to belong to the state, but because allegiance is an essential and ante-constitutional right, pertaining to the very existence of the state, which, if it could be, is not expressly granted, and hence must be among the state's reserved rights. He must defend the states, because they are the parties to, and actors under, the compact. They exclusively are all there is of

united states or government, and he must be a citizen and subject of a state before he can be a united states officer.

So, in every point of view, President Jackson's assertion of the transfer of citizenship and allegiance is untrue and baseless. Society as formed is sovereign, the members being citizens and subjects bound in the social compact; which is the only possible tie of allegiance, for the double reason that there is no king, and that society actually rules and protects its subjects, and is therefore necessarily entitled to the reciprocal obligation of allegiance.

Jefferson Davis or Robert Lee, then, never violated any allegiance, as he never "levied war against" Mississippi or Virginia, or any set of states that she was in point of fact united to, or adhered to their enemies, giving them aid and comfort." There can be no other united states, as to Davis, than his state and her sisters, who choose to be associated. He therefore comes not within the federal treason clause. His sovereign had a political will, in which his own was necessarily merged, and he, as but one of her hundreds of thousands of citizens, could but yield to the power which, *de facto*, had constitutional possession of him, and which deported him from the union, regardless of his will, and commanded him to defend her. He could not do otherwise than obey, leaving the settlement of all questions of technical right to tribunals, to negotiation, or to the arbitrament of war.

I reiterate, then, that **the citizens are the state, and that the only citizenship and allegiance in the American polity, and contemplated by the fathers, were of and to states.** *Q. E. D.*

CHAPTER VIII.

THE STATE IS ABSOLUTE OVER THE SOLDIERY.

3. THE state being the citizens thereof, and the arms-bearing citizens being the military force, the state has the original and supreme right, coupled with the duty, to control the said force, for her defence.

Their social instinct, and their instinct, right, and duty of self-preservation, moved the people to form themselves into commonwealths, to protect themselves and their belongings. For further security they, as states, afterwards united in federal union: "to bind, in one ligament, the strength of thirteen states." [Pendleton in Va. conv.]

Politically speaking, "the people" — as has been said — could only exist and exert will as states. It was only as states that they could create and operate a federal government, or governmental agency. Now, look at the proposition, that "the people's" own agent — the federal government — can draw them, as individual soldiers, from the state, and arm, train, and compel them, under penalties, to fight the body politic they themselves, and their families, friends, and neighbors, compose; or, in other words, that the voting and fighting men, who practically constitute the state, can by her federal agency be marshalled, armed, and led to whip the women and children thereof!

The military force contemplated for the united states was primarily the people — the citizen soldiery. The people were to think for themselves, vote for themselves, fight for themselves; and since independence, they never have had the slightest sparkle of political existence, or capacity for political action, either in peace or war, except as states — absolute commonwealths.

What does Massachusetts say? — The old Bay State never thought otherwise. She regards the militia as her soldiers, and the only purpose of them to be her defence; and she considers federal control as exceptional, and as specifically agreed upon and ordained by herself and her sister states for her and their "defence" and "welfare," and

the preservation of "the blessings of liberty" common to all of them, principal among which blessings, are the rights of complete self-organization and existence, self-association, self-protection, and self-ruling, as commonwealths, whether several or united.

Hence she declares herself to be the absolute sovereign of her territory and people; she organizes her citizens as soldiers; she appoints and commissions all military officers; she requires of all officials an oath of allegiance to her; she defines treason of her citizens or subjects to be the waging of war against her, and giving aid and comfort to her enemies; and she attaches to it the penalty of death; and by these means she, with original, inherent, and supreme right, absolutely controls her militia, *i. e.* the whole body of her citizens capable of bearing arms.

Her fundamental law declares that her governor is the "commander-in-chief of all her land and naval forces," and is empowered and instructed, "for the special defence and safety of the commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them; and with them to encounter, repel, resist, expel and pursue, by force of arms, . . . and also to kill, slay, and destroy, . . . all and every such person and persons as shall at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth." Here is provision for her whole military force to be used to defeat usurpation, or repel aggression of the federal government; and this would have been done, in the second British war, if the said government had persisted in its claims, and peace had not supervened. If she thought the federal government sovereign over her as a political body, why, in 1795, did she deem it unnecessary and inexpedient to change the above, and her declaration of "sovereignty"? And why did she, in the convention of 1820, reject an amendment modifying the above article? Simply because she has never parted with her sovereignty, and she is determined, when occasion shall arise, to defend it with her whole physical force. Her declarations of absolute sovereignty, and the provisions for the use of all her strength, remain her organic laws now. She claims the right to use force against the federal government; and, as will be seen, she says emphatically, that she intends to use it when she deems it necessary. And she is right, for the militia are her subjects, and the federal government can have no authority over them but what she expressly confides or entrusts.

And she and the other states always meant by the maxim that the military is and must be kept subordinate to the civil authority, that it belongs to and is under the state, as its means and instrument of self-

government and self-protection, whenever public fighting, or a show of public force, is, or may be, needed. It can only have power and existence under the law, and must of course be always subordinate to, and controlled by, the source of the law, the organized will of the people.

And it is well to say here, that the constitution throughout contemplates the use of men and means in warfare, for the "defence" of the people, and never for attack. Self-attack, and possible self-destruction, could never be predicated or presumed of the intention of states, in uniting for "defence" and "welfare."

Her Political Action in the Union. — In her law entitled "An act for regulating, governing, and training the militia of this commonwealth," passed March 6, 1810, she quotes from the act of congress "to provide for the national defence, by establishing a uniform militia throughout the united states," passed May 8th, 1792, the provision "that each and every free able-bodied citizen of the respective states, resident therein," who is over eighteen and under forty-five, shall be enrolled, etc.; and she then proceeds to provide for her most absolute control of her militia. Among other provisions showing her autocratic determination in this regard, are those referring to the appointment and commissioning of the officers, and the oaths to be exacted from each. The latter are as follows: —

1. "I, A. B., do truly and sincerely acknowledge, profess, testify, and declare, that the commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent state. And I do swear that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traitorous conspiracies, and all hostile attempts whatsoever; and that I do renounce all allegiance, subjection, and obedience to the king, queen, or government of Great Britain, and every other foreign power whatsoever; and that no foreign prince, person, prelate, or state hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing or other power in any matter, civil, ecclesiastical, or spiritual, within this commonwealth, except the authority and power which is, or may be vested, by their constituents, in the congress of the united states.

And I do further testify and declare that no man, nor body of men, hath or can have any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation; and that I do make this acknowledgment, profession, testimonial, declaration, denial, renunciation, and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever, so help me God"!

2. The oath of office to discharge the duties faithfully according to "the constitution and laws of this commonwealth."

3. "I, A. B., do swear that I will support the constitution of the united states."

Ah! in the brave days of old, she was autocratic in voice and act. She had not then been degraded by her own sons to a county or province — a mere jewel in the crown of King Union!

How did she act in 1814 when her federal government was warring in defence of her rights? As a county? Oh, no! Her agency at Washington wanted some of her soldiers to use "for the common defence" — including hers, of course." She constantly opposed the war and requisitions, and when she feared the federal powers she thought to be usurped were about to be executed on her men and means, she, with Connecticut and Rhode Island, and a few delegates from other states, held the Hartford Convention, which thus expressed her views as a sovereign: "In this whole series of devices and measures for raising men, this convention discern a total disregard for the constitution, . . . and a disposition to violate its provisions, demanding from the individual states a firm and decided opposition. . . . Acts of congress, in violation of the constitution, are absolutely void. . . . It will be proper for the *several states* to await the ultimate disposal of the obnoxious measures recommended by the secretary of war, or pending before congress; and so to use their power, according to the character these measures shall finally assume, as effectually to protect their own sovereignty, and the rights and liberties of their citizens." The convention proceeds "to recommend to the legislatures of the states represented therein, to adopt all such measures as may be necessary effectually *to protect the citizens of the said states* from the operation and effects of all acts of congress" — such as those above characterized; also to recommend negotiations with the federal government; and also, "if the application of these states be unsuccessful, that they hold a convention at Boston next June, with such powers and instructions as the exigency of a crisis so momentous may require."

Fortunately, however, the ambassadors sent by Queen Massachusetts soon reported that "peace" "happily superseded the necessity of the arrangements [being made] for the defence of the commonwealth."

To sum up, then, although Massachusetts may have been, as some think, selfish and ungenerous, as well as morally wrong, she was constitutionally on impregnable ground. She was no mere province. Possessing original, inherent, and unlimited rights, but no derivative ones whatever, she was an independent state, with a sovereign

will; and she simply acted as such. And though she and others may by war have forced the subject states to "*consent*" to a change of faith and works, yet *she* keeps the *old* faith. By legislative act of May 8th, 1866, she puts herself on a war footing, evidently knowing that the precedent of coercing states might be applied to her. In said act, she provides that every commissioned officer shall, before doing duty, take and subscribe the following oaths and declarations: "I, A. B., do solemnly swear that I will bear true faith and allegiance to the commonwealth of Massachusetts; and I will support the constitution thereof; so help me God." He is also sworn to do the duties of the office, and to support the constitution of the united states.

I reiterate, then, on the high and august authority of Queen Massachusetts, the third idea of the point under discussion, the republican idea: that **the state being the citizens thereof, and the arms-bearing citizens being the military force, the state has the original and supreme right, coupled with the duty, to control the said force, for her defence.** *Q. E. D.*

CHAPTER IX.

DEFENDING ONE'S STATE IS SELF-DEFENCE.

4. THAT citizens, by defending the state, are defending themselves, as required by Nature's first and most imperative law.

Man, the natural being, is not more a creation of God, than is the civil being called the state; for the latter is formed by men, under the promptings of the nature created by the Deity. Self-preservation is the first law for both man and state; and, indeed, man was prompted to form society by this very instinct, society simply being men organized for self-preservation.

Republican society is necessarily a consensual arrangement of the people who compose it; for as every man has a right to expatriate himself, his staying therein, and being a part thereof, is by consent. The accountability of the members to God for proper conduct in all things, shows the self-ruling of society to involve the only divine right of government that can be vested in human beings. Such accountability were unjust, if such right were withheld or limited. To state it more amply, it is, 1st, the right to be a self-formed society; 2d, the right of the said society absolutely to govern itself; and 3d, the said society's unlimited right of self-defence. As to the last point — the others having been sufficiently treated of — the same God-given instinct of self-preservation which, as heretofore stated, prompted men to form society, must make self-preservation "the first law of nature" to it, just as surely as it is "the first law of nature" to each member thereof.

Hence, as an American state is the only political society of the people ever formed; as such *state* is "*the people;*" as it is recognized, throughout the federal pact, as the complete body that coacted with its peers in forming the federal constitution of self-government; as it "contains within itself" — to use the words of Hamilton — "all the powers of government;" as it declares all power [*i. e.* sovereignty] to be inherent in itself; and as the only powers parted with are delegated, — it follows necessarily that this moral person can at any mo-

ment, with or without reason, and, *à fortiori*, for self-preservation, gather in all her entrusted or delegated powers, recall her citizens from federal offices, and say to them, and the rest of her sons, in case of federal menace or attack: "I am the state, and you collectively are myself — 'bone of my bone and flesh of my flesh.' Arm yourselves to defend my life, my integrity, and my sovereignty! The collective people, according to the social compact, have the right to govern and command the individual. By obeying and defending myself, my will, and my law, you defend your individual selves, and all you hold dear on earth."

The question here suggests itself for passing notice: Where is the right of ultimate judgment and decision on points vital to the republic — the commonwealth — the citadel of freedom, and the palladium of the people's rights and blessings? It were simply absurd to say: It is in the government, which is only derivative; and not in the collective people, who have, inalienably, the only original and inherent power of self-government. Did the people, in attempting to govern themselves, make a machine that has the right, if they resist, to grind them to powder? The matter is too plain for argument. [See Part IV. ch. XI.]

It is unquestionable, then, that, **by defending the state, citizens are defending themselves, as required by nature's first and most imperative law.** *Q. E. D.*

DEFENDING ONE'S STATE IS NOT TREASON.

5. That, as the citizens in organization are the integers and governing authority of the republic, a citizen cannot commit treason by obeying the will of the body, for this is precisely his obligation in the social compact, and, of course, his highest political duty.

This corollary is so important and vital, that I feel justified in repeating, that the Almighty, in making men free moral agents, designed them for self-government, and capacitated them for it; that it were Divine injustice to require them to answer for "the deeds done in the body," if they have not full choice in all matters of government; that, prompted by the social instinct, they form society to unite their strength, wisdom, and means for self-protection and self-rule; that thus is the society, called the commonwealth, formed; that it governs by Divine right, and acts in all things as a unit or moral person; that it is only in this collective form and way that men are capable of political self-government; that as individuals they are merged in the society, without the reservation of any political rights whatever, and are under voluntary engagement to be governed and bound by the action of the said state, as long as they remain

members thereof. Referring to Part IV., chapters I. and II., on the formation of a state, I will quote here, as sufficient — nay, conclusive — what Massachusetts has declared from the beginning till now, viz.: that "the body politic is . . . a voluntary association of individuals;" and that "the whole people covenant with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good;" that is to say, the collective members are to govern and control each individual one, for all the purposes of society.

Accordingly, she declares that "the people . . . do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body-politic or state, by the name of *The Commonwealth of Massachusetts.*" [See const. Mass.]

Hence each person is, as New York calls him, a "member of this state," or as Massachusetts expresses it, a "subject of this commonwealth," or as the federal and other constitutions declare, a "citizen of the state." Indeed, each person is an integral part of his own commonwealth, and no original relations can exist between him and any other political society. And as neither the federal constitution nor history hints at any other relation, or at even the slightest change in the bodies-politic, any one of them, as to subjectship and allegiance, must stand in the same relation to her people as does king, prince, or feudal lord to his; and be the only object of treason.

And here comes in with peculiar force the admission of Mr. Curtis, heretofore quoted, [see Part IV. chapter VII.]: "The relations of the individual to the political society, of which he is a member . . . came into existence as soon as a sovereign American state was formed out of a revolted British colony."

Our Federal Compact changed Neither States nor Citizens. — We must steadily and determinedly keep it in mind that the states, in making their constitution, were providing for government, and not constituting society. They themselves were societies, complete ones; and their citizens were the integers, making up the state in each instance, just as bricks and lumber make up the building. At that very time, New York called them "members" of herself; Massachusetts called them "subjects" of herself, as did Vermont; the states generally characterized them as "citizens" of themselves; and the federal compact repeatedly provided for all "THE PEOPLE OF THE UNITED STATES" as "CITIZENS OF DIFFERENT STATES."

It is certain, then, that each and every American citizen had, at the beginning, *i. e.* before as well as after the constitution was formed, the *status* of the citizen of a state; and it is equally certain that the doctrine of a national citizenship is an untruth — an absurdity. Surely so important an event as the change of the *status* of citizens of

states, so as to give them the *status* of citizens of an all-comprehending state or nation, would have a conspicuous history; but there is no evidence of it — not a word!

Having shown that no change was made in the *status* of citizens by the original compact, let me show that

No Change is made by the Late Amendments. — Amendment XIV., the only one that could have such effect — provides that "all persons born or naturalized in the united states, and subject to the jurisdiction thereof, are citizens of the united states, and of the states wherein they reside."

This — construed, as it must be, with the rest of the constitution, so as to make all parts effective, there being no inconsistency — leaves citizenship as a *status* precisely where it was: the first idea in importance being that the people are "*citizens of different states*" just as they are all repeatedly described and provided for in the constitution; and the second idea is couched in the convenient generalization — "citizens of the united states," which can only mean "citizens of different states" who, in the compact of their sovereigns, are provided for as follows (italics mine): "The *citizens of each state* shall be entitled to all privileges and immunities of *citizens in the several states*." [Art. IV. § 2.]

This is all that Amendment XIV. can, as to this subject, possibly mean — except that within its description come the negroes, who are citizenized thereby, and made the equals of the former "citizens of different states" and "citizens of the united states." There is in the amendment no sign of any intent, 1st, to change previous citizens in their *status;* or 2d, to make unequal citizens, *i. e.*, to place the new ones, in any respect, on any different footing from the old ones.

I submit, then, these conclusions: —

1. That there was in the original constitution no change of the *status* of "citizens of different states" who are "citizens of the united states."

2. That this *status* was not changed by Amendment XIV., but that the negroes had such *status* conferred on them by it.

3. That, with this exception, the late amendments merely extend federal civil jurisdiction.

4. That federal coercion is, as originally intended, on persons only, and is that of law, through the magistracy.

5. That the people are the state, and the state is the people; these entities, as named and provided for in "the supreme law," being in no wise changed.

The error of the expounders on this subject springs from forgetting that the commonwealth or republic is a society of people, purposed

and organized for self-government; and that hence self-government must be *functional action*, in nowise self-destructive, or, even self-injurious. The state is complete, and is perfectly formed and fitted to do all the acts of government, *e. g.*, constitute governments, delegate powers, elect or appoint representatives, federate with other societies, &c., &c. These are all functional acts, to do which she has the machinery of intellect—including the judgment and will, which she has always acted with, whenever any question arose pertaining to her "defence" and "welfare." In her constitution of 1780, existent to-day, Massachusetts declares her "right to institute, reform, alter or totally change" the government "at pleasure." She has done so many times, notably when she united with her sisters and made a general government. This act wrought no change in her; and the word "Massachusetts" must mean to-day what it did in 1788, when that sovereign placed it, with her delegations, stipulations, and conditions, in the federal compact. She was not then melted into her elements, and poured into a national mould. She is now unchanged Massachusetts, and can do every functional act she ever could. She is composed exclusively of her members or subjects, and in governing herself she controls them.

Hence I repeat that, **as the citizens in organization are the integers and governing authority of the republic, a citizen cannot commit treason by obeying the will of the body, for this is precisely his obligation in the social compact, and, of course, his highest political duty.** *Q. E. D.*

CHAPTER X.

ALL TREASON IS AGAINST THE STATE.

6. CONSISTENTLY with the foregoing, **the federal constitution itself proves the state to be the sole object of treason.** In discussing this point, I do not aim at a historical, legal, or philosophical disquisition on the subject, so much as to show the design of the framers; the intent of the commonwealths; the impression made upon the people; and, in short, the understanding with which all acted.

Not only does the federal instrument, as we have seen, prove citizenship and allegiance to belong to states, but it gives a striking corroboration of the view I have presented on treason. We have seen that the states, by ratifying, ordained and established the constitution, to provide for and effect their defence and welfare, and secure the blessings of liberty to themselves and their people; that, *ipso facto*, the ratifiers associated themselves; that they are named in the instrument and recognized throughout, and especially in the last article, as the only parties, and the prospective actors; and that the said constitution is their law — their supreme law.

The Treason-Clause is the Law of the States. — Of course the treason-clause must be *their* law, bearing solely on *their* citizens — that is to say, on all the citizens of the states that associated themselves. It reads thus: "Treason against the united *states* [not "the nation" — not "the people" — not "the government"] shall consist only in levying war against *them*, or in adhering to *their* enemies, giving them aid and comfort." Mr. Curtis, the "Massachusetts school's" "historian of the constitution," says this clause was designed "*to defend the supremacy of the national government*," *i. e.* the sovereignty thereof. But the said government is not mentioned; and when Mr. Curtis shows that "*the government of*" the united states is the united states themselves, it can be proved, by the same logic, that the horse of Mr. Curtis is Mr. Curtis himself. Besides, it is very singular, if the plural pronouns "them" and "their" stand for government — a singular word not in the sentence — instead of "states," which is

their plural antecedent. In truth, the only purpose of the clause is to compel citizens to obey the will or law of their respective states, as expressed in the federal compact; and to be true to the said states singly and collectively. And it is obvious that refusal to obey is disobedience to the state, and that warlike resistance is treason to the state, for which offence the state necessarily has the original right to punish; the right of the federal government to do so being merely delegative and derivative from the states.

We see, then, that the federal compact itself positively proves, in the citizenship and treason clauses, that the only object of allegiance and treason is this sovereign society of people, called the state. Our only monarch for allegiance is society, or the organized people; and our only tie, answering to the allegiance of political science, is the social compact. Republican allegiance must involve fidelity to society in return for society's protection; and treason must be a violation of this allegiance. And, accordingly, the state constitution provides for treason against the state *per se*, and the federal one for treason against her and her chosen associates, both laws being her will and voice; and both being evidenced by acts of conventions, representing the sovereignty of the state, and deriving all their life and force therefrom. The key-note of all the acts of the states and the utterances of the fathers is that "*the sovereign authority of the state* is the *palladium* of the private and personal rights of the citizens" [Samuel Adams]; there being no people but states, no state but citizens, and no semblance of a nation that is not composed of the very states which agreed, in specified matters, to govern themselves together, and made all federal institutions to protect themselves, and, *ipso facto*, their citizens, as the sacred records of our country all conclusively show.

The federal instrument itself proves this view, not only, 1st, in asserting treason against the several individuals associated, to be "levying war against *them*, or in adhering to *their* enemies"; but 2d, in declaring all the people to be members and "citizens of different states," and providing for them as such. This is really the end of argument, for treason in a republic must be a crime against the commonwealth, which the one charged is bound to obey. As to the general government, it must be subject to its creators; and all its powers must be derived from them. It has no inherent vitality and strength — no original authority — nothing that is underived — nothing that is not subject. Hence, not it, but the original and creative power above it, must be the object of treason.

Yes, it is the republics or people-governments themselves, and not their mere artificial and governmental institutions, endowed with *trusted* authority only, that define and denounce "treason against the

united states," and delegate the power, and appoint the functionaries, to punish. And each state laid her law upon her own subjects, as is absolutely proved in Part II. So we find it beyond question that federal jurisdiction in any given state, and the legal force of the treason-clause on her citizens, flow from her sovereignty alone.

Inter-state Faith is the Sole Basis. — As the states were pre-existent moral persons, had minds, and came together through mental action, they are necessarily in a voluntary union; and are bound in association, and moved to their societal duty by plighted faith. Each promises that, in certain matters, her subjects shall obey the will of all; and she "lays the law," *i. e.* the federal compact, on them to that effect; delegating to the association the power to try and punish federal treason, which is hostile opposition to the federal will, which will she has pledged her faith her subjects shall obey. In truth, everything federal is based on this faith, which is more than knightly or royal, it being the faith of all the people both in their individual and collective capacity. This faith pervades — nay, it is the be-all and the end-all of the constitution — its most important expression being the guaranty of all the states to each that she shall be and act as a republic or self-governing people. [Art. IV. § 4.]

It is beyond controversy, then, that treason against the united states is a violation of allegiance to the state, in disobeying and fighting against her authority in the federal constitution; and that she has defined it in her said supreme law, and delegated jurisdiction to her agency — the federal government — to try the offender and punish him. This becomes clear, when we reflect that the state could have declined to delegate, and could have "reserved" to herself the power to punish treason against the united states, just as she could have done in respect to any other power. Indeed, she might have reserved half the powers she delegated in the compact, and still have had as extensive an instrument as was the first "federal constitution" — that of 1778.

Now, let us apply, and at the same time illustrate, the above principles, by showing the testimony and the functional action of the two most important of the original states.

Let us first see the case of Virginia. — In providing for self-preservation, and also self-government, in matters common to her and her sister states, Virginia held her convention of her own motion, and in her own time and place, and declared her sovereign will as follows: "We . . . in convention, . . . in the name and behalf of . . . Virginia, do . . . ratify the constitution, . . . hereby announcing . . . that *the said constitution is binding on the said people*, according to an authentic copy hereto annexed, in the words following," &c. In her then

existing and solemnly established character as a "free, sovereign, and independent state," she then and there completed her ratifying, ordaining and establishing of the constitution, and, *ipso facto*, her union with the other states. In every possible respect, she was Virginia after the establishment, and was under obligations of faith to act as such in the union. She was named in article I., with her statehood, faculties, and sovereignty intact. Said Chancellor Pendleton, the president of the ratifying convention, — no one dissenting, — "Our purpose is to be intimately connected with the other twelve states; to establish one common government, and bind in one ligament the strength of thirteen states." It is impossible to suppose she did not survive ratification, or that she was, with the other twelve, consolidated into one. No record shows any nationalizing process, but all the evidence is that such an idea was emphatically repudiated. [See Part III., chapter VII.]

So we see that "sovereign, free, and independent" Virginia, as she and all her sisters declared her to be, did, by *her* sovereign power, subject *her* citizens to *her* supreme law — the federal constitution, or, in other words, "laid the law on" *her* people — to use the apt expression of Rufus King. They still remained her citizens, and were recognized as such by clauses interwoven, in the federal constitution, with the very treason-article which was invoked to punish the said citizens for obeying her call to arms, *e. g.*: "*The citizens of each state* shall be entitled to all privileges and immunities of citizens in the several states." [Article IV. § 2.] "The judicial power of the united states shall extend . . . to controversies between *citizens of different states;* between *citizens of the same state*," &c. [Art. III. § 2; see also Amendment XI.] No citizen of a nation was ever recognized, or provided for. States, as complete and sovereign political bodies, existed before the federal agreement. Each state was composed of its citizens originally, and it has ever continued to be so. These "citizens of different states" were the only people in the land possessed of civil and political rights. Their citizenship or allegiance has never been changed. No hint of transfer can be produced.

The Transfer of Allegiance a Gross Absurdity. — How absurd is the new idea taught by the "school," that the state, in passing the ordinance ratifying the federal constitution, and commanding the obedience of her members to the federal government then, *ipso facto*, formed, alienated, in that act and moment, the said citizens, and discharged them from duty to herself. To do so was to defeat her own purpose; for her authority over her citizens was necessary to secure or coerce their obedience to her new political arrangement and "supreme law." Not only so, but such transfer of allegiance would

have been a virtual dissolution of the state (the tie of allegiance, as has been shown, being the social compact), and the formation of a consolidated and homogeneous commonwealth, comprising all the states, — the very thing the fathers dreaded, and sought to *avoid*, as all the records show.

The notion of a transfer of allegiance, like that of a delegation of sovereignty, is an utter absurdity. Either is state suicide, which no presumption favors, and which the records of the country entirely disprove. Delegating sovereignty (including the transfer of the citizens to a representative government) would be as manifest a solecism as delegating ownership to an agent. As in the latter case the agent becomes owner, so in the former the representative becomes sovereign — both cases being alienations or abdications unknown to legal or constitutional history.

Consistently with the above, we find no change in the states hinted at in the federating instrument, but them named and provided for as pre-existent entities — moral persons.

Secondly, let Massachusetts testify. — Here, as usual, she steps forward as the champion of statehood. As a free, sovereign, and independent commonwealth, she put her mind deliberately to the subject, and, through her convention, she approved and adopted the federal constitution, declaring as follows, February 7, 1788: "The convention . . . do, in the name and behalf of the people of the commonwealth of Massachusetts, assent to and ratify the said constitution for the united states of America."

Her self-assertion then stood, as it has ever since done, as follows: She declares her citizens to be formed into the state by the social compact, wherein each is bound to be governed in all things by the voice of the said state. Her declaration is quoted only a few pages back, and it is hers to-day. [p. 410, *supra.*]

She declares that the commonwealth so formed is absolutely sovereign. Here are her queenly — nay, imperial words, sounding to-day; "The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them expressly delegated to the united states, in congress assembled." "Government is instituted for the protection . . . and happiness of the people. . . . Therefore, they alone have an incontestable, unalienable and indefeasible right to institute government, and to reform, alter, or totally change the same, when their protection . . . and happiness require it." [Const. Mass. Part I. articles 4, 7.]

She declares every power, vested by her in the united states, to be

"*delegated*;" and all officials to be mere "substitutes and agents" of the people. [Ibid. Part. I. articles 4, 5.]

She declares her people to be her citizens, and calls them "subjects of this commonwealth" [Ibid. Part I. art. 11]; while the federal pact corroborates it, by calling all the people of the country "*citizens of different states.*"

She commands her governor to assemble all her "citizens" and "subjects," or rather "inhabitants" — this being the word she uses — to "repel" "by force of arms," and to kill, slay, and destroy all such persons as shall "attempt" "the destruction, invasion, detriment, or annoyance of this commonwealth." She makes no exception of, but includes, the federal government, as I have heretofore shown. [Ibid. Part II., ch 2.]

She requires, in her constitution and laws, that every officer shall take an oath of allegiance to her as a sovereign. Up to 1820, the oath was in the extended form given heretofore. In that year it was shortened, but not weakened, to read as follows: "I. A. B., do solemnly swear that I will bear true faith and allegiance to the commonwealth of Massachusetts, and will support the constitution thereof: so help me God." [Amendments 1820, art. 6; see also her law and oath of 1866, referred to *supra*, 407.]

She declares, under the heading of "offences against the sovereignty of this commonwealth," that "treason," in one of her "citizens" or "subjects," "shall consist only in levying war against her, or in adhering to her enemies, giving them aid and comfort." [R. S. of Mass., ed. 1836, p. 715.] To aid any person or authority, whether federal or other, to coerce her with arms, would constitute the crime.

And finally she declares, that "every person who shall commit the crime of treason against her shall suffer death." [Ibid.] And if on any one of several occasions — and especially the one occurring in 1814 — the federal government had pushed the dispute with Massachusetts to an issue of arms, she would rightfully have executed any subject of hers who had dared to fight for the said agency, against his commonwealth and sovereign!

Vermont and Kentucky add Conclusive Proof. — These two states make the correctness of the foregoing completely manifest. They show the understanding that morally binds all the states, the people, and the general government, to the proposition that *the allegiance of the citizen is due alone to his state*, and that hence the only possible *treason is a crime against* the original sovereign — *the commonwealth* of people; the law of treason being their will, and the trying and punishing functionaries being their instruments.

Vermont and Kentucky were the first states to join the federal union after it was first formed, the former in 1791, and the latter in 1792; and their cases became designed, studied, and most conspicuous precedents, especially on the vital subjects of allegiance and treason.

Let us first take the case of Vermont. — She "laid the law on" her people, through her convention, on January 10, 1791, as follows: 'This convention . . . do . . . approve of, assent to, and ratify the said constitution; and declare that the same shall be binding on us and the people of the state of Vermont for ever." [I. Ell. Deb. 338.]

Two years after this, supposing herself to be like her sisters, a "free, sovereign, and independent state," she formed her state constitution, aiming, of course, to harmonize it with her federalized condition. Therein she prescribes the following "oath of *allegiance to this state*," as she calls it, to be taken by all her officers: "You do solemnly swear that you will be true and faithful to the state of Vermont."

This constitution, lately, if not now, extant, contains the following remarkable provision: "Every person of good character, who comes to settle in this state, *having first taken an oath of allegiance*, may purchase . . . real estate, and after one year's residence shall be . . . entitled to all rights of *a natural born subject of this state*, except," &c.

So much for Vermont. Next let us note

Kentucky's view of Allegiance and Treason. — In 1792 she held a convention, through which she declared her will to be a state, and to become a member of the union, while about the same time congress passed an act admitting her — both acts taking effect, *ex vi termini*, on the first of June, 1792.

In her constitution, adopted 17th August, 1799, and lately, if not now, extant, is the following official oath of allegiance: I do solemnly swear, that *I will be faithful and true to the commonwealth* of Kentucky, as long as I continue *a citizen thereof*.

One more extract from the record of this county or province, will suffice: "*Treason against the commonwealth* shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort."

We are now enabled plainly to see

The Early Faith on this Vital Subject. — On the momentous occasion of admitting the first of the long line of new states, the land would have resounded with objections and protests, if there had been error on these vital points of allegiance and treason, but there was none.

These new states, and the congress of states, as did all the people, and all their leaders and political philosophers, concurred in the view that there were, —

1. No political organizations of people but states.
2. No political rights but the rights of states.
3. No sovereignty but that of the people of states.
4. No citizens but citizens of states.
5. No allegiance but allegiance to states.
6. And no treason but that against a state.

CHAPTER XI.

ALL TREASON IS AGAINST THE STATE (CONTINUED).

THE above conclusions are supported by all the facts of history; by all the utterances of the fathers; and by all the provisions and principles of the constitution itself. The fathers who planned, and aided to establish, the federal system, whether acting as delegates to the federal or the state conventions, were members, citizens, and subjects of the commonwealths, owing allegiance to, and bound to preserve, them. Hence these builders built with pre-existent materials — combined indestructible and absolute states into a new federal polity. Nothing was created, destroyed, or changed. The people, as states, exerted their own wills, and became "united states" — "essential component parts" of the "new system" (as Hamilton himself declared), intending to exercise government themselves. Obviously, treason is against the people as they are organized. But let us reason further into the philosophy of the matter.

The Crime is against Society. — It is obvious that treason is not against the instituted government; but is against society, which rules and protects, and is entitled to allegiance, precisely as if a king. The monarch in the one case, and society in the other, says: "I am the state; allegiance is due me, and treason is against me."

If not so, why did Webster say: "Sovereignty of government is unknown in North America; . . . the people alone are sovereign"? [Speech of 1833.] If not so, why did Madison say: "Each state . . . is considered as a sovereign body . . . only to be bound by its own voluntary act" [Fed. 39]; and that the present system "consists of many co-equal sovereignties"? [III. Ell. Deb. 381.] If not so, why did the Federalist, speaking the views of Hamilton and Jay, as well as Madison, declare that "the federal and state governments are, in fact, but different *agents* and *trustees* of the people, instituted with different powers, and designated for different purposes"? [Art. 46.] And why, finally, if it be not so, did Mr. G. T. Curtis state, as the American doctrine, that governments with us are only "*agents and depositaries* of the power of the people"? [II. Hist. Const. 38.]

Treason is against the state, then, not only according to the constitution and the fathers, but, as we shall see, according to natural reason. The body rules and protects, and is entitled to reciprocal duty and devotion [see pream. const. Mass. appendix D]. Hence we infer that true loyalty in a citizen is fidelity to his state, and that treason against the united states ceases to be a crime when the alleged act is done in defending one's state, or when she disunites herself.

It is not inconsistent with these principles, for the states, acting under the *jus gentium*, to force a seceder to come back to the same old constitution, with all its provisions and principles intact: for it provides for *equal* and *self-governing* united states. And if truth, justice, and the principles of institutional liberty, which are formulated in the constitution, are persistently violated, and no remedy is found therein, a state ought to withdraw, as one patriarchate withdrew, with God's approval, from another, to avoid strife. [Gen. xiii.] They, like our states, willed to be together, and they could equally will to separate. Of course, withdrawal tenders an issue under the *jus gentium*, which the adhering states have as good a right to accept as the others to tender. [See Part I. ch. iv.]

Naturally Disunion ends Federal Treason. — Remembering that the power of repeal is precisely commensurate with, and the exact opposite of, the power to enact or ordain; and remembering that all the powers of the constitution are delegated by the will of superior authority, and hence withdrawable, natural reason and common sense will teach us that the crime of "treason against the united states" must end, as to a citizen, with his state's withdrawal from the association, and recall of her delegations.

We must keep it in mind that man is merged and politically lost in the state, and becomes subject to duty to and protection from her, by virtue of the social compact; as well as an integral part of the said state; and in his societal capacity a part of the governing authority. Politically, he is nothing, except in this connection. Moreover, *the state is named in the federal pact*, and recognized as one of its constituents, while the man is designated as *her citizen*, and is of course, a part of her. As such part, he was carried by her into the union. She organically survived the completion of it, abating nothing of her sovereign will. Being identical with said citizens, she functionally commands and controls them in all matters, including those of the federal instrument — this being her "law laid on them," just as the state constitution is, both being declared by her convention.

Citizens had no agency in giving life or validity to the federal compact, or doing anything towards it, except voting for delegates, who, *in convention*, were to express *the will of the state to ratify*, and thereby

ESTABLISH, the constitution, as provided by Article VII. [See *supra*, 153.]

Unquestionably, then, the treason clause comes from the wills of states; and a state makes or unmakes the offence at will, as to her own members, citizens, and subjects.

Naturally States can Undo what they Do. — No change having been wrought in the state and the citizen by the federal constitution, the former, of course, remained free, and the union voluntary. Hence she could disunite herself — withdraw her delegations — and recall her federal agents. If the ordinance of ratification is a functional act of mind, an exercise of will, can she not change her mind, and the act? If she made up her mind that her "defence," "welfare," and "the blessings of liberty," would be "promoted" and preserved by a given — say a federal — arrangement; and her experience afterwards showed that her purpose failed, that injury resulted, and that danger impended; were it not absurd to say that she could not change alike her mind and her means? Surely, if by her functional action this being express her will through her voters, and the delegates they elect, to disunite herself from the federal union, "treason against the united states," and federal jurisdiction to punish it, are alike, and at the same moment, brought to an end. This may be called secession, or some other odious name, to excite popular prejudice, but the political philosophy of it will endure forever. Withdrawal is the natural action of an unchained state; there is no constitutional impediment; and the recent amendments have not even hinted at prohibition!

Why has not some St. George slain the dragon? Why has secession not been constitutionally prohibited? I will conjecture on this subject hereafter.

But the Matter is on a still Higher Plane. — It involves, indeed, the highest moral considerations, as well as obedience to Heaven. Withdrawal is, as to a state, the natural and functional act of a free being; and it is a moral duty, by a "moral person" — a society, endowed by Deity with existence, and with the instinct and right, as well as the duty, of self-preservation. As we have seen, God ordained society when He made man. And He made and gave mind for nothing, if not for the use and end of providing for the "welfare" and "defence" of the body that contains it. And naturally society or societies can do or undo — as we have seen — whatever their "defence" and "welfare" demand. And their free moral agency necessitates their option; for it would be absurd if a sentient being which Deity had made or caused, and intended to hold, in a manner, finally accountable, had not the right, and was not in duty bound, to use every power and faculty in self-preservation; or if such being had not the right to

provide for its defence and welfare, by undoing an act it had mistakenly done for that purpose, and which threatened its harm and destruction.

And, viewing this society, not merely as the government (which, as a republic, it is), but as the heaven-commissioned custodian and defender — the citadel, so to speak, of the members of the society, their families, and their "blessings of liberty;" duty and honor would compel it to destroy, not only the federal government, but the whole world besides, if necessary to fulfil its sacred trust.

It is right here that we find the highest application in all the moral and physical world, of the great truth that "self-defence is the first law of nature."

The Tie that binds the Citizen to Obey. — Plainly, then, the tie of allegiance — the social compact — binds the citizen to obey the state's federal will or mandate, and makes it treason for him to fight her and her united sisters; and plainly, in order that the treason-clause should apply to him, her act or ordinance of ratification must be in force, and the state in the union.

It was the same voice — the same law-making power that laid the treason-clause on the member, citizen, and subject of Virginia, in 1788, and that annulled it in 1861. On the former occasion it said: "Be it ordained;" on the latter, "Be it repealed." The citizen that obeys the one has the same reason for obeying the other viz. that each member of the commonwealth is bound, by the all-comprehending obligation of the social compact, to obey the said body. There is no shade of original and ultimate authority over citizens outside of this body. It is a republic or self-governing people; and "*No authority, on any pretence whatever,*" can "*be exercised over the people or members of this state, but such as shall be derived from or granted by them.*" [*Supra*, p. 62.] This standing declaration of New York is vital to each and every state in the union. *It is self-government!*

The federal constitution ends the subject by considering, and providing for, all the people as "citizens of different states," *i. e.* as members, integers, and subjects. And the federal convention of 1787 unanimously declared the "states" to be "the government" — as, being republics, they must have been — the so-called government being their agency. [See II. Curtis's Hist. Const. 608.]

In conclusion of these two chapters, then, I affirm that not only do history and philosophy show, but that **the federal constitution proves** (and is strictly consistent with the idea), **that the state is the sole object of treason.** *Q. E. D.*

CHAPTER XII.

CONCLUSION.

WE are forced, then, to stand upon the law of our political being and nature, and admit that *our whole system is states, and nothing else;* that "levying war against" a state's enemies, under her command, and adhering to her, giving her "aid and comfort," is always duty and not treason; and that the fathers thought that every citizen should and would, upon call of his commonwealth, rally to her flag, as against any other.

And this is what Hamilton meant by the following, which was the general sentiment of that day: "The state governments will, in all possible contingencies, afford complete security against invasions of the public liberty by national authority. In a confederacy, *the people,* without exaggeration, may be said to be *entirely masters* of their own fate." [Federalist, 28; see also the views of Ames and Parsons, II. Ell. Deb. 46, 94; see also Part V. Ch.V.]

Why fight Facts? — We may not like such facts and philosophy. But why "wreck ourselves against necessity?" [De Stael.] Why — to borrow one of Carlyle's singular expressions — "mash our face to a pancake against the adamant of things"? States are as separate, solid, and enduring as island rocks in the ocean. And we should cherish and defend them as the sacred treasuries of all our blessings — as the last refuge and citadel of freedom. Seward, after the war, spoke truly, wisely, and well, in saying: "This absolute existence of the states which constitute the republic, is the most palpable of all the facts which the American statesman has to deal with. . . . Our federal republic exists, and henceforth and forever must exist, through . . . the combination of these several, free, self-existing, stubborn states. . . . They are living, growing, majestic trees, whose roots are widely spread and interlaced within the soil, and whose shade covers the earth." [Speech at Auburn, October 20, 1865.]

"Indestructible states" is the phrase applied, since the war, to our commonwealths by Chief Justice Chase [State of Texas *vs.* White]; and it is a truth. Atoms of water do not more naturally glomerate into a distinct drop, than men tend to form society. All gather

naturally around a centre of collective existence, possess a corporate soul; and in that form become conscious of the instinct, the right, and the duty of self-preservation.

And free states gravitate, like free men, to some common centre. Of course, it is where the ties of amity, neighborly good-will, sympathy of common origin, common design, and common expectations; mutual interest and confidence; and a well-founded hope of interstate justice in the future; are all knotted or formulated into a conventional arrangement like the federal (or league-al?) constitution.

Who Saved the States? — In our four years' war among the states, the parties were compelled to recognize, and deal with one another, as belligerents; and necessarily their voluntary ties of union were dissolved. Some judges have wished otherwise, and so decided; but assertions do not make facts.

The elements of the states, which returned to the union, might have been melted and poured into unity by the victors; but Massachusetts, New York, Pennsylvania, Ohio, and Illinois only desired a *union of states;* and they saw that the constraint of one by the rest, in peace, would be to themselves a most dangerous precedent; and they had Henry Wilson, John A. Andrew, William H. Seward, Gerrit Smith, Thaddeus Stevens, Salmon P. Chase, Benjamin Wade, and Lyman Trumbull — to say nothing of others — watching to see that the respective republics, and the republic of republics, should receive no detriment.

The aforesaid states and statesmen probably influenced the shaping of amendments XIII., XIV. and XV., so that, while the results of the war should be secured, absolute statehood should be preserved. They might have revolutionized the states into a nation, but they preferred the system to remain "united states."

And Civil Rule and Legal Coercion yet Stand. — These amendments were made by the states, according to Article V. of the compact, as all the previous ones had been. The original instrument was left unchanged and unmodified; no sentence or word of it was repealed, even by implication; and the civil jurisdiction of the federal government was simply extended, the means of enforcement remaining the same. Even the right of secession was not prohibited — probably because it involved a vital principle of freedom; and because prohibiting it would have been precisely equivalent to chaining states.

And the aforesaid commonwealths and their statesmen did not, in their measures of reconstruction, profess to act inside of the constitution. Thaddeus Stevens said there were only two men in all congress who argued that those measures were constitutional. "In all this business," said he, "*we act outside of the constitution.*"

Evasion of Jefferson Davis's Trial. — It was the facts and principles herein set forth, and the vital importance of them to these "stubborn," "indestructible states," that caused Seward, Chase, and President Johnson to evade the trial of Davis, Lee, and the other confederate chiefs, while pretending to desire it. Reason, silent in war, longed to implead "the government" in time of peace. Justice would have vindicated the defendants and their "lost cause" — this being the cause of institutional liberty — the cause of the American commonwealths.

The True Sanction of the Union. — The coercive use, on the states, of their own men and means, by their own citizens and subjects, whom they elect as agents, cannot be the cohesive force of *a voluntary union* of states. Such an idea would be, as Madison said, "visionary and fallacious;" as Hamilton said, "the maddest project ever devised;" and as Randolph and others said, "war." The "attraction of repulsion," and not of cohesion, would be illustrated by such a plan. No, the people collectively, as well as individually, must be "*attracted*" — to use the expression of John Quincy Adams in 1839 — "by the magnetism of conciliated interests and kindly sympathies." If they be, the union must endure. The people, collectively, being sovereign bodies, their personal fealty is to, and their sympathy with, themselves. Nothing more august, dignified, potent, or heaven-approved, can exist as the basis and sanction of a union-government of republics.

The real bond and conserving force of the association is, as it always has been, the plighted faith of sovereigns, resting on *their* satisfaction and sense of safety, *their* amity and neighborly kindness and *their* mutual interest.

When, and by what act, did this union become involuntary — a chained union? When did these undeniable original feelings and motives change?

Sacred Inter-State Faith is the Only Basis. — Webster could but say in 1819: "The only parties" to it, "originally," "were the thirteen confederated states;" and it rests solely "on compact and plighted faith." And this could but be, as it really was, Webster's dying view. [See App. F.; also *supra*, pp. 207 — 211.]

Hold Sacred the Muniments of Liberty. — The highest use of constitutions and laws is to protect "the blessings of liberty" against rulers. The world's history is mainly devoted to recounting the efforts of the few, by fraud and force, to control and tax the many; and our fathers aimed to forefend the danger, by giving to the said rulers only written authority, specially empowering, directing, and controlling them, and precluding discretion, particularly in the federal

agency, as to which no power is valid unless expressed — all not expressed being retained. The terms, and truths, and principles are the very walls of our fort, and any giving up or compromise of a provision, a principle, or a truth, which forms a part, is in the nature of treason as well as perjury.

The only safety of the people's blessings of liberty is the sacredness of constitutions. In the olden time, this sentiment was all-pervading, like the atmosphere. "The inviolate sanctity of a written constitution," said Hamilton, is "the life of a republican government." Many similar expressions could be quoted from Washington, Jefferson, Jackson, and others.

Our most dangerous perverters are federal functionaries, who readily swear to do, and not to do, as the procuration directs, but soon ignore their solemn adjuration, and forget that — as Webster says — "the constitution, *to preserve itself*, lays its hand on individual duty and conscience;" and who claim and exercise all the power they wish for, and suppose to be popular, whether warranted by the compact or not.

At all times and in every possible form, they assert that "we are a nation," assuming every point needed to make up that theory. "Of the making of books" to establish it without proof, "there is no end" — the evident aim being to assert the states out of, and a nation into, existence. Even the federal supreme court have asserted — contrary to all history — that a change was made from a union of states to another system [9 Wheaton, 1], and that the federal government (including said court) is sovereign — with coercive power, of course — over the very states that are the real government, and that established *the federal governmental agency*, of which the federal supreme court is a part [2 Otto, 542]. How can the temple endure, if its very high-priests undermine it?

Title by Assertion. — If such things can be done, why not bring into political and legal science a new title to authority — the *title by assertion?* Why not acquire property in the same way? And why, since we can alter the constitution by assertion, should we trouble ourselves hereafter with that clumsy contrivance, Article V.?

Why continue to punish as crime, when done to property, that which rulers do as to authority? In what is the perjured thief of "powers," better than the starving stealer of a loaf?

Anathema. — A constitution is a rule of faith and practice, as essential to the temporal welfare as the Bible is to the eternal. The curse which the latter denounces against heretical teachings should be hurled against those who pervert our sacred fundamental laws: "If any man teach any other gospel [or constitution] to you, let him be accursed."

Let us Acknowledge our Sovereigns. — If the words, figures, and meanings of the federal pact are unchanged, and if the amendments have in no wise varied the plan of our polity, or reduced the grade of the republics, why not henceforth recognize our allegiance to our commonwealths; implicitly obey their *home* and their *federal* commands; and render constant faith and undying devotion to their integrity, honor, dignity, and sovereign will?

The Palladium of all our Blessings. — Concentred in, and based on, the commonwealth, will be found all there is of patriotism, of collective character, of public opinion, and of moral force in government, as well as voting power. The republic is founded on the human heart. Its institutions are shaped by man to his own liking; are intended solely for his good; and are nothing but defences of his "blessings of liberty." An expression of Massachusetts, in January, 1776, is one of her glories now: "As the *happiness* of the people is *the sole end* of government, so the *consent* [*i. e.* the will] is *the only foundation* of it, in the reason, morality, and natural fitness of things." In one's home, family, kindred, friends, neighbors, and fellow-citizens, and their belongings, and in the institutions that surround, bind together, and protect them, is found the personal happiness, which is the great object of life, and the sole purpose of instituting government. These institutions are the vital defences of home, and hearth, and heart. The love of them is the cement and coherence of the state — that repository of all blessings, and citadel and last refuge of freedom. The federal system is the outer wall, or bulwark, to protect states — "a dyke," to use Fisher Ames's figure — "to keep out the destroying flood."

The people have chosen to be states, and why should they be undone? During one hundred years, these heaven-devised societies — take for instance Massachusetts, New York, Virginia, and Georgia — have exemplified and vindicated the capacity of man for self-government; each, as a complete republic, achieving a distinguished, a brilliant success. Each knew and felt that *her* "*sovereignty was,*" as Samuel Adams said, "*the palladium* of the private and personal rights of the citizen." Why should the monster, centralism, be allowed to destroy these precious entities?

The rightful central power is that which the commonwealths, for agential purposes, have established, the forces of which spring from, and are adjusted to, their own autonomy. The central sun of their system is their creation, and it draws its only light and heat from their inherent stores. Nothing of that central authority is original, or its own. And if even the "Bird of the broad and sweeping wing, whose home is high in heaven," were to be deprived, in mid-air, of all

strength but his own, his further history would be short, ignominious, and as follows: "tumbled, smashed, rotted!"

Plain Common Sense as to Union. — There is a naturalness of reason and sense, which should influence our minds on this great subject. It is found exemplified in the thought and conduct of business men as to business affairs. Man — the object of all politics and all law — ever tends to society, and seeks therein self-interest, safety, friendship, mutuality, justice and righteousness. Societies desire and tend to federate with precisely the same motives and ends. Why should we not deal with unions, constitutions of government, and the administration of such affairs, just as matters of arrangement and transaction are dealt with in business circles; being, of course, deliberate, and duly guided by political science, ethics, law and equity? Business men in legitimate transactions have precisely the above motives. That great man, John Quincy Adams, foresaw that "terms of union," or "articles of union" — as the convention of 1787 called them — being of human origin, must require change; and he inculcated preservation of amity among the peoples, as well as a desire to associate, and a willingness to be mutual and just; so that when a given union should fail to answer its ends, they would be minded to recur to precedents, and "form a more perfect union." Three unions of all the states have been made; and several more are possible. And it would be alike foolish, flagitious, and futile, to trammel the authority, the material interests, and the heartfelt sentiments of the peoples, with changeless forms — forms that might be blessings, A. D. 1880, but curses afterwards. Though beneficent originally, they may be "perverted from their purposes," and become destructive of liberty and the people's rights.

Man — the Sole Object of Institutions. — The state contains all there is of republicanism in the land. Politically man is merged and lost therein. He finds and enjoys there all his "blessings of liberty"; and, if he is safe "under his own vine and fig-tree," he little cares whether the state, or the association of states, is large or small. And the state herself, if safe, is as happy united with four, as with forty, peers. Witness Delaware, and Rhode Island, and the original thirteen, with their 3,000,000 of people. Size is not bliss, and nought of time is above change. Ages ago there existed between the orbits of Mars and Jupiter a primary planet which was shattered; but the fragments yet shine in their paths of glory, adding their smaller voices to the harmony of the spheres; and they are still as capable of working out the design of the great Creator, and promoting the happiness of their inhabitants, as they would be if they remained the original unity projected from His Almighty Hand!

Yes, the sole object of institutions is the happiness of man; and we should preserve these safeguards of his blessings of liberty in, or, if needs be, out of, the union. The greatest of our dangers are our rulers and politicians. Their perversions and excesses, if continued, will sooner or later destroy American institutional freedom. The warning of Burke is the Alpha and Omega of my book. Would that it were engraved on every American hearth-stone, and impressed on every American heart: **"This change from an immediate state of procuration and delegation to a course of acting as from original power, is the way in which all the popular magistracies of the world have been perverted from their purposes!"**

APPENDIX A.

No 1.

THE UNION OF STATES.

EXTRACTS FROM CONTEMPORANEOUS JOURNALS AND MAGAZINES TO SHOW HOW THE ADVOCATES PRESENTED THE UNION OF STATES, AND WHAT THE PEOPLE MUST HAVE THOUGHT IT WAS, AND INTENDED IT TO BE.

Extracts from the Massachusetts Centinel, from Oct. 3, 1787, *to Nov.* 19, 1787.

For many years I have gathered extracts from editorials, communications, political essays, speeches, state papers, and acts of the American commonwealths, contemporaneous with, and referring to, the forming of our association of states, with a view of reproducing for the sons the ideas and impressions that actuated the sires in forming our federal institutions.

The contending theories as to the character of our union are as follows:

1. That of the Massachusetts school — thus set forth by Webster: "The union . . . is the association of the people, under a constitution of government; . . . therein *they* establish a distribution of *their* powers between this *their* general government, and *their* several state governments." So far as this nation has thus expressed its will, "so far state sovereignty is effectually controlled." The Philadelphia convention of 1866 improved on this, by saying that "the government" has "absolute supremacy," and rightfully holds "the states in allegiance."

2. In opposition to the above theory of "the Massachusetts school," the constitution itself repeatedly characterizes the polity it provides for as a union of states — "the united states" — the instrument calling itself "the constitution of [*i.e.* belonging to] the united states."

It will be observed that the extracts all take for granted the facts — that cocqual states are acting; that they are the highest earthly authority; that the constitution and government spring from their concurring wills, and must be and remain subordinate to them; that they, as republics, are aiming to *govern themselves* through the *instrumentality* of governmental agencies; and finally, that they form an association of sovereign states.

The punctuation and italicizing are those of the original.

[Massachusetts Centinel, Oct. 3, 1787.]

"It is evident that all the necessary powers of this federal government, are fully consistent with every species of right and liberty of the people."

Ibid. "The inhabitants of the city and liberties of Philadelphia, have petitioned the legislature of Pennsylvania, 'That the American constitution, proposed by the federal convention, may be adopted as speedily as possible by the state of Pennsylvania, in the manner recommended by the resolution of the convention.'" [It was "the state" and not "a section or district of people" or "group of voters" that was to adopt.]

Ibid., Oct. 6, 1787. "All duties, imposts and excises are uniform through the United States; likewise the rule of naturalization and the laws on bankruptcies. The citizens of each state shall be entitled to the privileges and immunities of citizens in the several states." [In those days all "the people of the United States" were thought to be citizens of the states, as they are called by the federal constitution. See Art. III. § 2; Art. IV. § 2.]

Ibid. From a New York paper of Sept. 29, 1787: "Yesterday congress resolved unanimously, eleven states being present, that the new constitution is to be transmitted to the legislatures of the several states, in order to be submitted to a convention of delegates to be chosen by the people, agreeably to the mode prescribed by the convention." From the Philadelphia papers of Sept. 26, it is derived that "in each of the States of New Jersey and Delaware, the federal government has been received with universal satisfaction."

Ibid. "We are informed that in New York the constitution promises to be highly popular with the citizens."

Ibid. "The supreme executive of this commonwealth received from congress the constitution." The paper goes on to say that it is to be sent to "the legislature, which is to call a convention for the purpose of adopting the same."

Ibid., Oct. 10, 1787. From a Philadelphia paper of Sept. 29th:

"The motion in the general assembly, by George Clymer, that a convention be called to consider the proposed federal constitution, was adopted by 43 to 19 — the 19 seceded, leaving the house without quorum. Next day one of the minority was brought in by force, by persons unknown — was fined 5s — on attempt to leave there were cries to 'stop him,' but finally the house permitted him to leave — he and the rest of the minority thenceforward stayed away — and the house finally appointed the 1st Tuesday in November for choosing delegates, and the last Tuesday of same month, for the meeting of the convention at the State House in Philadelphia." [This not only indicates the virulence of the opposition, but shows the entire independence of the contest over the plan in Pennsylvania.]

Ibid. "A late sensible and judicious writer," says, this constitution "is calculated to answer the exigencies of the times, and to unite in one federal body the interests of all." "Why should members of one and the same family clash, when the interests of the family are the same."

Ibid., Oct. 13, 1787. "From a Portsmouth (N. H.) paper of Oct. 2:"

"In this metropolis" "all ranks are highly animated with the pleasing hope that this glorious structure, supported by 13 pillars will speedily be completed." [It was a common figure to call the states pillars upon which the federal superstructure was to be reared. The fathers never contemplated that the federal system should be based on any ground of its own. It was to have and to hold nothing of original, but *all* of derivative and delegative right. It was to be an agent and trustee: so said the fathers and the states habitually. "The states"

are "the essential component parts of the system" was Hamilton's phrase, and it was the view of all. They were contemplated and habitually spoken of as the actors in making the system. They were to go into it, as complete political bodies, and exist therein unchanged in name and character; and to be the sole actors and sources of power. The reader will observe that in these extracts, constant reference is made to the action of *the states* as political bodies.]

Ibid., Oct. 20, 1787. Extract from speech of John Hancock, governor, dated Council Chamber, Oct. 17, 1787: He said the general convention had done what they were appointed for, and "reported to congress 'a constitution for the united states of America.' I have received the same, and directed the secretary to lay it, together with the letter accompanying it, before the legislature, that measures may be adopted for calling a convention of this commonwealth, to take the same into consideration. . . . The characters of the gentlemen who have compiled this system, are so truly respectable, and the object of their deliberations so vastly important, that I conceive every mark of attention will be paid to the report. Their unanimity in deciding those questions wherein the general prosperity of the nation is so deeply involved, and the complicated rights of the states, and of each separate state, are so intimately concerned, is very remarkable: and I persuade myself that the delegates of this state, when assembled in convention, will be able to discern that which will tend to the future happiness and security of all the people in this extensive country."

Ibid. "From the Pennsylvania Gazette — important queries:" ". . . 3. Whether the constitution framed by the late convention ought not to be adopted by the several states, as the only means of extricating the people from the distresses they at present labor under. . . . 4. Whether, if the constitution now offered should be refused, there is any probability of obtaining another, more generally acceptable."

Ibid. "From the very handsome manner in which our worthy governor speaks of the new constitution, and from the observations of several legislators yesterday, we anticipate an early day being fixed by the general court for the meeting of our convention — that this state may have the great honor and singular happiness of being the first to adopt a system second to none in the world."

The Massachusetts Centinel, of Oct. 24, 1787, publishes with high *encomia*, the speech of Hon. James Wilson, (one of the delegates of Pennsylvania in the federal convention,) at the state-house in Philadelphia. It is copied from the *Pennsylvania Herald* of October 10. The following are extracts: His speech is professedly to answer "objections that have been raised." Before "refuting the charges which are alleged," he thus "discriminates between the state constitutions, and the constitution of the united states."

"When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not, in explicit terms, reserve, and therefore upon every question respecting the jurisdiction of the house of assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating federal powers, another criterion was necessarily introduced; and the congressional authority is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of union. Hence it is evident, that in the former case, everything which is not reserved is given, but in the latter, the reverse of the proposition prevails, and everything which is not given is reserved. This distinction will furnish an answer to those who think the omission of a bill of rights a defect in the proposed constitution. For it would have been superfluous and absurd, to have stipulated with a federal body of our own

creation, that we should enjoy those privileges of which we are not divested, either by the intention or the act that has brought that body into existence."

In reply to the objection that the rights of trial by jury in civil cases, was abolished or endangered, in the states, he said: "Let it be remembered, then, that the business of the federal convention was not local but general; not limited to the views and establishment of a single state, but co-extensive with the continent, and comprehending the views and establishments of thirteen independent sovereignties." [In other words trial by jury, *habeas corpus*, freedom of the press, owning and enjoying property, religious freedom, marrying, voting, etc., etc., "relating only to personal rights" — to use the words of another great Pennsylvania statesman, Tench Coxe — "could not be mentioned in a contract among sovereign states." How absurd to suppose that up to the time these organized commonwealths were compacting, all these personal rights and privileges were unestablished and insecure.]

As to the objection that the "constitution tolerates a standing army in time of peace," he says he knows no nation that does not "maintain the appearance of strength in a season of the most profound tranquillity. Nor is it a novelty with us, for under the present articles of confederation congress certainly possesses the reprobated power, and the exercise of that power is proved at this moment by her cantonments along the banks of the Ohio."

Speaking of attacks on the senate, he says: "When we reflect how various are the laws, commerce, habits, population and extent of the confederated states, this evidence of mutual confidence and accommodation, ought rather to command a generous applause, than to excite jealousy and reproach."

Next he meets the objection that the "federal constitution is not only calculated, but designedly framed to reduce the state governments to mere corporations, and eventually to annihilate them. The objectors do not seem to comprehend the extent of the term corporation. It is commonly applied to petty associations of a few individuals, but in its enlarged sense it comprehends the government of Pennsylvania, the existing union of the states; and even this projected system is nothing more than a formal act of incorporation. But upon what pretence can it be alleged that it was designed to annihilate the state governments, for I will undertake to prove that upon their existence depends the existence of the federal plan." He then proceeds to show how the president, senate and house of representatives, are to be appointed. The president is to be chosen by electors to be chosen "in such manner as the legislature of each state may direct" — no legislature, no electors, no president. The senators are "two senators from each state chosen by the legislature" — no legislature, no senate. The house of representatives is composed of members chosen every two years "by the people of the several states, and the electors in each state" are those that elect members of the second branch of the state legislature. "Unless, therefore, there is a state legislature, that qualification cannot be ascertained, and the popular branch of the federal government must likewise be extinct. From this view, it is evidently absurd to suppose that the annihilation of the separate governments will result from their union."

[Tench Coxe explained this very point as follows: "As under the old, so under the new federal constitution, the thirteen united states were not intended to be, and really are not, consolidated in such a manner as to absorb or destroy the sovereignties of the several states."]

"The power of direct taxation has likewise been treated as an improper delegation to the federal government; but when we consider it as the duty of that body to provide for the national safety, to support the dignity of the union, and to discharge the debts contracted upon the collective faith of the states, for their common benefit, it must be acknowledged that those upon

whom such important obligations are imposed, ought in justice and in policy to possess every means requisite for a faithful performance of their trust."

Speaking of a law of the state of Pennsylvania, he says, "as it was the imbecility of the present confederation which gave rise to the funding law, that law must naturally expire when a competent and energetic federal system shall be substituted."

[He elsewhere speaks of the new system as "a confederation of states," *with additional powers, an executive, a judiciary, a second branch of the legislature, and a power to regulate commerce,* not possessed by the first federation.]

In conclusion, speaking in general terms of the opposition to the plan, he considers it to originate with those who are interested in those offices, judicial appointments, and collectors of revenues which are transformed [transferred?] from the individual to the aggregate sovereignty of the states.

Says the editor, in referring to this speech, "the quintessence of all that can be objected to the American constitution, is in the address of the Pennsylvania seceders, and a complete answer to them, and other anti-federalists can be found in the address of Mr. Wilson."

[Mr. Curtis, the author of the so-called history of the constitution, affects great partiality for James Wilson, and shows it in quoting from him. One evidence of it is, that while quoting about 12 or 14 large pages, he leaves out all the above, and many similar passages of Mr. W.'s great efforts in the convention of Pennsylvania, wishing apparently to show that Mr. W. favored consolidation, while, in reality, he was trying to defend the new system from even the suspicion of it.]

Ibid., Oct. 24, 1787.

[From the New Haven Gazette, Oct. 17.]

"Yesterday the general assembly passed a resolve appointing, Monday, the 12th day of November next, for the several towns to choose delegates to a state convention, to be holden at Hartford, first Thursday of January next to consider the doings of the late federal convention at Philadelphia — the delegates to be chosen, as the representatives to the general assembly are."

Ibid.

[From the New York Packet, Oct. 12.]

"The inhabitants of Burlington county, and district Carlisle, New Jersey, have voted to instruct their general-assembly-men to call a convention for adopting the federal constitution as soon as possible."

Ibid., Oct. 27, 1787. In the Massachusetts house of representatives there was a debate in reference to calling a convention. Said Mr. Davies, of Boston, "The people will consider this point, with all the other proceedings, when in state convention . . . To say that the people have no right to do this, if it shall appear to them that the old confederation is inadequate to all the purposes of national government, is just saying that we had no right to oppose the British power when it became oppressive, and that we are all now in one great rebellion." [He was speaking in reference to the alleged indissolubleness of the old confederation.]

"The probability is that the proposed government will meet the wishes of almost all the people of almost every state in the union."

Judge Parsons, of Newburyport, on the same occasion, said: "As the people alone were the proper and immediate judges of the system proposed by the

federal convention, he hoped there was not a person in that house who would attempt an abortion of so noble a conception."

Ibid. Contains a statement that the elections in Pennsylvania show that "a large majority of the people of that state are strongly attached to the new federal constitution."

Again, "Accounts from Maryland show that the federal government will be adopted almost unanimously in that state."

[Ibid. Oct. 31, 1787.]

Poplicola [very able and clear,] replying to objections, says: "We are not to forget that these very officers [of the federation] are the creatures of our own choice, amenable to us, and to be re-called at our pleasure."

"The gentleman [an old whig] has observed that people are unwilling to part with the power they have got; it is for this reason I do not believe the inhabitants of this country will ever lose sight of the essential privilege of calling their public servants to account."

"It is a known truth that in the constitution [proposed], every privilege is left, which is not expressly taken away from the people."

Ibid., same date. "A correspondent remarks that the *same* or *similar* objections to those raised against the *new constitution* were offered against the *confederation*. It was to be an irreversible decree, like the laws of the Medes and Persians. Experience has proved the fallacy of such an idea, and those who object to the American constitution on this score do it in mere wantonness or from calculating the tyrannical views of those who may chance to govern us by their own propensities to domination and lust of power."

Ibid., Nov. 3, 1787. From the Middlesex *Gazette*. "There can be no good, free and secure government but where every man is under the coercive power of the law. . . . Under this system [the federal constitution] no man can be above law. Rulers must govern according to law; or . . . be chastised. The people have power to compel their rulers to do their duty."

Ibid. The editor says with reference to the judiciary power in this federal government: "How are disputes between a state and citizens of another state, and between citizens of different states to be decided?"

Ibid. The editor publishes a letter of Hon. Elbridge Gerry as containing "opinions on a subject of first importance to the country," from one of the great men. Gerry says: "As the convention was called for the 'sole and express purpose of revising the articles of confederation; and reporting to congress, and the several legislatures such alterations and provisions as shall render the federal constitution adequate to the exigencies of government, and the preservation of the union,' I did not conceive that these powers extended to the formation of the plan proposed; but the convention being of a different *opinion*, I acquiesced in *it*, being fully convinced that to preserve the union, an efficient government was indispensably necessary, and that it would be difficult to make proper amendments to the articles of confederation." He says further: "The constitution proposed has few if any federal features, but is rather a system of national government," and suggests as questions necessarily arising: "1st. Whether there shall be dissolution of the *federal* government. 2. Whether the several state governments shall be so altered as in effect to be dissolved; and 3 whether in lieu of the *federal* and *state* governments, the *national* constitution now proposed shall be substituted without amendment." [See I. Elliott's Debates, 492.] [Gerry, like Martin, Henry, Lowndes and others, was trying to defeat the constitution by charging it with what the whole people were averse to —

consolidation. And, strange to say, these charges, which would have defeated it but for decisive refutation, are now predicated of it, as its real meaning, by Dane, Story, Webster and Curtis! They are met and refuted herein.]

Ibid. "The late continental convention have recommended calling state conventions for the *sole* purpose of *adopting* or *rejecting in toto* their plan of government." [The general idea was "that each state should adopt or reject *in toto*, and not attempt to amend — this being likely to produce confusion and delay."]

Ibid., Nov. 7, 1787, a correspondent writes: "Besides the securities of the people arising out of the federal government, they are guarded by *their state constitutions, and by the nature of things in the respective states.*" The article goes on to enumerate the classes of state officers — governor, legislators, judges, etc. — to be "*chosen within each state, without any possible interference of the federal government.* The separate states will also choose *all the members of the legislative and executive branches of the united states.* The people at large in each state will choose their federal representatives, and . . . the electors of the president and vice-president of the union. And the legislatures of the states will elect the senate," etc. Can it be, then, — the article continues — that "a majority of the representatives" will "betray their country?" "Will a majority of the senate, each of whom will be chosen by the legislature of a free, sovereign and independent state, . . . destroy our liberties?"

[Massachusetts Centinel, Nov. 10, 1871.]

"President Sullivan" has summoned "the general court of New Hampshire" "to consider on business of the highest importance — the appointment of a convention" to adopt or reject the federal constitution.

Ibid., contains an able and statesmanlike letter, from which I copy the following. After saying there is no religious test for office under "the new constitution," and mentioning other features, it says: "The old federal constitution contained many of the same things, which from error or disingenuousness are urged against the new one. *Neither* of them has a bill of rights, *nor does either* notice the liberty of the press, because they are already provided for by the state constitutions; and, relating only to *personal* rights, they could not be mentioned *in a contract among sovereign states.* The people will remain, under the proposed constitution, *the fountain of power and honor.* The president, the senate, and house of representatives will be the *channels* through which the stream will flow — but it will flow *from the people*, and from them *only: Every office*, religious, civil and military, will be either their immediate gift, or it will come *from them* through the hands of *their servants.* And this will be firmly guaranteed to them under the state constitutions, which they respectively approve, for they *cannot* be royal forms [of government,] *cannot* be aristocratic, but *must* be republican.

"*Nothing* can be more plain to the eye of reason, or more true, than that the SAFETY of the people is amply provided for in the federal constitution, from the restraints imposed on the president — those imposed on the senate — and from the nature of the house of representatives — and that of the *security* for national safety and happiness, from every part of the federal government.

"There is no spirit of arrogance in the new federal constitution. It addresses us with becoming modesty, admitting that it *may* contain errors. Let us, fellow-citizens, give it a trial; and when experience has taught its mistakes, THE PEOPLE WHOM IT PRESERVES ABSOLUTELY ALL-POWERFUL, can reform them." [This letter is from Tench Coxe, of Pennsylvania, one of the great statesmen and political writers of that period. Note, that the security for

national safety and happiness "was to be attained by a contract among sovereign states." And the people, as such "sovereign states," were to be "preserved all-powerful." This letter was published everywhere, and never controverted as an exposition.]

Ibid., Nov. 14, 1787. A correspondent speaks of the "new states' constitution."

Ibid., Nov. 17, 1787. An extract is published from the Pennsylvania Journal of Nov. 3d, to the effect that the house of assembly of New Jersey, after declaring that "the commissioners from this state have reported a constitution for the future government of the united states, agreed upon" in the convention of states; and further declaring it "to be the earnest wish of the good people of this state," that there be assembled "a convention within the same, for the purpose of deliberating and determining on said constitution" — unanimously passed resolutions in favor of a convention, fixing time, etc.

Ibid., Nov. 21, 1787. Twenty-three formidable objections to the new federal plan, are urged by an officer of the late Continental army, substantially as follows:

1. It is not merely, as it ought to be, a confederation of states, but a government of individuals.
2. The powers of congress extend to the lives, liberties and property of every citizen.
3. The sovereignty of the different states is *ipso facto* destroyed in its most essential parts.
4. What remains of it, will make dissensions between state and congress, and terminate in the ruin of one or the other.
5. "The union of the states," will be destroyed in a struggle, or their sovereignty swallowed up by an aristocracy, because if two equal *sovereign powers* command the citizens' purses, they will struggle for the spoils, and the weakest will yield to the strongest.
6. Congress, possessing these great powers, the liberties of the states and people are not secured by bill of rights.
7. The sovereignty of the states is not expressly reserved, the form and not the substance of their government being guaranteed to them by express words. [How much this wretched quibble about the "*form*," but not the substance of a republican government being guaranteed, is like the constitutional expositions of the Massachusetts school.]
8. Trial by jury is abolished in civil cases.
9. The liberty of the press is not secured, and congress can destroy it.
10. Congress can keep a standing army in time of peace.

In the 13th, he finds fault with representation; in the 14th, with the senate; in the 15th, he says the president is an elective king, and has command of the army; in the 17th, he complains of want of rotation in office; in the 18th, that annual elections are abolished; in the 19th, that congress can fix time, place and manner of elections.

In the 21st he says the militia is to be commanded by congress and that peace men may be compelled to bear arms. In the 22d he fears the government will be expensive, the judiciary part particularly. In the 23d he concludes that the new plan of government partakes of monarchy and aristocracy.

Ibid. "The general assembly of Delaware" has "provided for a convention to consider the proposed plan of government."

"Five states have agreed" to conventions for the purpose.

Ibid., Nov. 24, 1787. "New Haven, Nov. 15. Virginia has directed a convention to meet next May, with powers not only to accept or reject, but to *amend* the new constitution."

"It is very evident that should the arts, lies and misrepresentations of the enemies to a federal system so far delude the good people of the states as to reject the new constitution, all government will be at an end. And what then will become of the state constitutions?"

Ibid., Nov. 28, 1787.

An able contributor shows that as the English constitution was unwritten and English governmental powers somewhat undefined, the English people "insisted on an *expressed* bill of rights" — an "express confirmation of those parts of their constitution which former monarchs had denied or violated." "If we [the people of Massachusetts] had not a state constitution already declared on paper, and if we were now in the same circumstances we were in, when we seceded from Britain, and before we had ascertained and declared all our rights, it might be more necessary for us to do it now, when we are to form a new federal compact. But agreeably to the theory of the original contract, . . . we assembled in a state convention eight years since, and then plainly distinguished, agreed to, and published, a bill of rights, and form of government for this commonwealth. I now undertake to say that we part with few or none of these rights by accepting the new federal constitution; that where we part with any, it is in exchange for others that are national, and fully expressed, and that some of those rights, ascertained in the state constitution, are even repeated in that which is offered by the federal convention. . . . The first section in the federal form, will help our eye-sight to see that we retain all our rights which we have not expressly relinquished to the union. That section declares that all legislative powers herein given (i. e., given in the new constitution) shall be vested in congress, etc. The legislative powers which are not given therein, are surely not in congress; and if not in congress, are retained by the several states and secured by their several constitutions.

"The opposers of the new government charged that 'the liberty of the press is not provided for.' But the real question is, where is it taken away? The several state constitutions already protect the liberty of the press, and no legislative power is given to congress to restrict that liberty. . . . Congress has no legislative powers but what are given them by the constitution; they therefore can never restrict the liberty of the press." "So," he proceeded to say, "with trial by jury, which it is objected the new government does not protect."

[Some of the expressions of this writer being identical with certain words and phrases common in the pretended interpretations of the Massachusetts school, it may be instructive to criticise them here. These expressions assume, and indeed assert, that some part of the people's "rights" were "given up," "parted with," "relinquished," "surrendered," etc., etc.; that is to say, alienated. This is the germ of that idea which grows rapidly into the "government's" "right of self-preservation," and its "absolute supremacy." It is almost needless to say that such expressions are sheer fallacies, though it is likely that few of the utterers know it. The compact provides for the "delegation" of "powers," and not for the "surrender" of "rights;" and there is no word in the instrument indicating, or even hinting at, such alienation. The constitutional words "grant," "vest" and "delegate" mean *confided to agents and trustees for the behoof of the owners.* "The people," who are organized republics, and have the unlimited and inalienable right to govern themselves, cannot attend to it personally, and, therefore, they do it through "servants," "agents," and "trustees." These are the very names by which the fathers designated the federal functionaries, and the purely vicarious capacity of these functionaries was ever kept in view.

Even a small child ought to see that if "the people" "surrender" any "right" to the government, it was the "right" to govern them; and when this "right" is "given up," the people are under a despotism, as subjects

and slaves, having committed political suicide. A republic becomes no republic, when it loses the absolute right of self-government, a right which, like honor and virtue is indivisible and inalienable.]

[Massachusetts Centinel, Nov. 28, 1787.]

An able writer under the signature of *Valerius*, says: It is objected to the new constitution, that it is deficient in a bill of rights. This objection might have had the greatest weight in a government merely national — as, in this case, there would have been no intermediate checks between the governing power and the people, over whom the constitution was intended to operate. But the form of government now proposed, is, by no means, of this sort. It is a federal government in every point of view, and is predicated, in every part of it, upon the idea of subordinate constitutions being in actual operation. When we inquire, therefore, where we are to look for that personal security inseparable from the very idea of freedom, we are only to cast our eye on the respective constitutions, and on the principles upon which they are established, and the difficulty will be immediately resolved. Had there been no governments in existence, limited in their powers to their several districts, there would have been need of articles defining and explaining those rights, of which every individual feels himself possessed, and which are as firmly secured to him, as if they were formally prefixed to the new constitution, in the same manner that they are so fully and explicitly stated in our several state constitutions.

"When the convention was in session, they were to form a constitution suited as near as possible not only to the habits and dispositions of the people at large, but to the governments in operation. The difficulty was not, in what way the rights and privileges of the people could be secured to them — it would have been absurd to have spent even a day in the contemplation of this object, for these rights and privileges were fully and effectually secured already. They saw in the constitution of every state the strongest provisions for the rights of the subjects that ever were yet committed to paper or parchment in any country, or in any situation. Indeed no spot on earth is found but in America, in which such, or any precautions, were expressed to guarantee to each individual the rights of person and conscience, which, in this country, are secured, and will be forever inalienable, whether delineated in the preamble to the federal constitution or not.

"If the convention had only to select, for the federal head, such powers as were necessary for the protection and safety of the whole, as was really the case, how strange would it have been for them, to have formed a provision in a bill of rights to secure what is already so fully established. The liberties of the Romans, Greeks, and English, have been continued through a series of years, even without the use of the press, which I conceive to be the greatest security of all others. Now will any man say that congress, under the new constitution, will have a single power to limit the operation of this essential privilege? and, if they have, in what passage is such a power expressed? We have declared in this state, that the liberty of the press is an indispensable right of the people. Can the congress alienate this right? The moment they attempt it, the new constitution would be annihilated, and the question would be put on the issue of force. Our state constitution declared that each member of society is possessed of certain natural rights, privileges, and immunities. Does the federal constitution say otherwise? No; it is set up merely to confirm them.

[No more accurate, clear, and forcible statement could be made. Comment would weaken or obscure it. Why have not the Storys, Websters, and Curtises, reproduced these writings?]

Ibid. In a Richmond paper of Oct. 27th, it is stated that the Virginia

assembly "*unanimously* resolved that the new constitution be submitted to a convention of the people for their *full* and *free investigation* and *discussion*," the convention to meet on the 4th Monday in May.

Ibid. The paper says the citizens of Newburyport are so well pleased with Rufus King's conduct "in congress and in the convention of states," that they have elected him their first delegate to the state convention.

Ibid., Dec. 5, 1787. From the Connecticut Courant is copied a criticism on Hon. E. Gerry's letter. ". . . The federal legislature can take cognizance only of national questions and interests, and for this purpose 5 or 10 honest and wise men chosen from each state — men of previous experience in state legislation — will be more competent than a hundred. . . . The same qualifications that enable you to vote for state representatives, give you a federal voice. . . . The proposed plan, he [Mr. Gerry] tells us, involves these questions — 'whether the several state governments shall be so altered as in effect to be dissolved? Whether in lieu of the state governments, the national constitution now proposed shall be substituted?' I wish for sagacity to see on what these questions are founded. No alteration in the state governments is even proposed, but they are to remain identically the same that they now are. Some powers are to be given into the hands of your federal representatives, but these powers are all in their nature general, such as must be exercised by the whole, or not at all, and such as are absolutely necessary. . . . Why are we told of the dissolution of our state governments, when by this plan they are indissolubly linked. They must stand or fall, live or die together. The national legislature consists of two houses, a senate and house of representatives. The senate is to be chosen by the assemblies of the particular states, so that if the assemblies are dissolved, the senate dissolves with them. The national representatives are to be chosen by the same electors, and under the same qualifications, as choose the state representatives, so that if the state representation be dissolved, the national representation is gone of course. State representation and government is the very basis of the congressional power proposed."

Ibid. Northampton, in "town meeting," instructed her delegates, Caleb Strong and Benjamin Sheldon: "We have delegated you to meet in state convention . . . for the purpose of adopting or rejecting the reported constitution of the united states of America." The document goes on to show the importance of the occasion: "The civil dignity of the states, of the united states, and perhaps of humanity," are involved, "and we wish you patiently to hear, and attentively to examine every argument that shall be offered for and against its adoption." We want "an equal, energetic federal government." We want "the dignity and welfare of the union, as well as of Massachusetts" promoted. While "tenacious of the rights and privileges of the people, be not afraid to delegate to the federal government such powers as are absolutely necessary for the national honor and happiness."

Ibid. "News from Pennsylvania shows large majority of convention of the state in favor of the constitution."

Ibid., Dec. 8, 1787. "Let the thirteen states, bound together in a strict and indissoluble union, concur in erecting one great American system, superior to trans-Atlantic force and influence, and able to dictate the terms of the connection between the old and the new world."

Ibid. News from Georgia, that the house of assembly have recommended a state convention, "for taking under consideration the new federal constitution." News from Philadelphia shows the meeting and organization of the state convention.

The editor reports the statement of a correspondent that John Jay (though

a good and able man,) though at first for, is now against the constitution, calls it a deep and wicked conspiracy. In New York it is known by the name of gilded trap. Elsewhere it is said or intimated that the state of New York is likely to reject the constitution.

Ibid. After giving the names of those elected to the convention from Boston and other towns, the editor speaks of circumstances which "presage a happy issue of the deliberations of that great Arcopagus which is to determine whether this state will assent to and ratify the constitution," etc.

[Massachusetts Centinel, Dec. 10, 1787.]

Extract from speech of James Wilson in Pennsylvania convention:

"In all governments there must be a power from which there is no appeal, absolute, supreme, uncontrollable. . . . It remains and flourishes with the people. It is a power paramount to every constitution, inalienable in its nature, and indefinite in its extent. For I insist, if there are errors in government, the people have the right not only to correct and amend them, but likewise totally change and reject its form; and under the operation of that right they can never be wretched beyond retrieve, unless they are wanting to themselves. . . . In a democracy [such as ours] the supreme power is inherent in the people, and is either exercised by themselves or their representatives."

The editor says: "This speech which the Roman orator would not blush to own, ran through an impression of several thousands in a few days at Philadelphia, at one shilling each."

[Massachusetts Centinel, Dec. 18, 1787.]

A very able reply — copied from the *Connecticut Courant* — to Col. George Mason's objections to the federal constitution, contains the following:

"*There is no declaration of rights*, [says Col. M.] Bills of rights were introduced in England when its kings claimed all power and jurisdiction, and were considered by them as grants to the people. They are insignificant, since government is considered as originating from the people, and all the power government now has, is a grant from the people. The constitution they establish, with powers limited and defined, becomes now to the legislator and the magistrate, what originally a bill of rights was to the people. To have inserted in this constitution a bill of rights for the states, would suppose them to derive and hold their rights from the federal government, when the reverse is the case."

"*There is no declaration of any kind to preserve the liberty of the press*, [says Col. M.] Nor is liberty of conscience, of matrimony, or of burial of the dead mentioned. It is enough that congress have no power to prohibit either, and can have no temptation. This objection is answered in that the states have all the power originally, and congress have only what the states grant them."

[The *Centinel* calls the article a pertinent critique. It is very clear and cogent, and it must be from Ellsworth, Sherman, Law, or some leading man of Connecticut.]

Ibid., Dec. 22, 1787. The editor, speaking of danger to the liberty of the press says: "As all the powers congress are to possess, will be the grant of the people, we can have nothing to fear from that body — if this privilege is ever destroyed, it must be by the people."

Ibid., Dec. 26, 1787, contains part of a speech of Hon. Jas. Wilson in the Pennsylvania convention. He reasons that "a bill of rights was not necessary, because *congress only have such powers as are granted*." And if the people should undertake to frame a bill of rights, "what they happen to omit,

might be presumed to be given." "A bill of rights would have been improperly annexed to the federal plan, and for this plain reason, that it would imply that whatever is not expressed was given, which is not the principle of the proposed constitution." This principle he declares as underscored above. The italics are in the original.

[In consequence of the fears aroused by the Websterian dogmas, which appeared in those days in the guise of charges, made by the enemies of the constitution, for the purpose of defeating it, and which nearly accomplished the purpose; the people unfortunately insisted on a bill of rights, which to allay their apprehensions, and to guard against the possibility of consolidation, (or a nationalization of the states,) was appended to the constitution as amendments, [see amendments, 1 to 8 inclusive]: and now our politicians, so-called statesmen, and many profound lawyers, call the *federal* (or league-al) constitution, "the charter of our liberties" — never dreaming that these provisions are the sacred institutes of Freedom herself; and are fundamental and *vital* in the very organic laws of all the states. Neither a soul of the fathers, nor a state, ever thought of a *transfer*, or a signing away, of these great essentials, for it would have been political suicide; but the said amendments were intended as limitations — "to prevent an undue administration of the federal government," as Massachusetts expressed it through her ratifying convention.]

Ibid. "The convention of the state of Georgia were authorized to consider said report, letter, and resolutions [of the federal convention] and to reject or adopt any part or the whole thereof."

Ibid. Copies an extract from the *Pennsylvania Gazette*, which I will give as published to show the ideas and impressions of that day:

"*The* FIRST PILLAR *of a great* FEDERAL SUPERSTRUCTURE *raised.*"

"DELAWARE. — The deputies of the state convention met at Dover, on Monday, the 3d, and a house being formed, they elected James Latimer, Esq., President. On Thursday they ratified the federal constitution by an UNANIMOUS vote, and on Friday EVERY MEMBER signed the ratification as follows:

"'We the deputies of the people of Delaware state in convention met, having taken into our serious consideration, the federal constitution, proposed and agreed upon by the deputies of the united states, in a general convention, held at the city of Philadelphia, on the 17th day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, have approved of, assented to, and confirmed, and by these presents, DO, in virtue of the power and authority to us given for that purpose, for, and in behalf of ourselves and constituents, FULLY, FREELY and ENTIRELY APPROVE OF, ASSENT TO, RATIFY and CONFIRM the said CONSTITUTION.'"

"SECOND PILLAR raised. On Wednesday, the 12th inst., in the state convention of Pennsylvania, the Hon. Mr. McKean, agreeably to notice given on a previous day, recurred to his motion made at the opening of the convention, viz: RESOLVED, That this convention do ADOPT AND RATIFY the CONSTITUTION of federal government, as agreed upon by the federal convention at Philadelphia, on the 17th day of September, 1787. A lengthy debate took place, which did not close until 12 o'clock at night, when the question being put, the numbers were: for the motion, 44; against it, 22. The next day, proclamation of the same was publicly made, and was RATIFIED by the PEOPLE, with those expressions of applause which the sons of freedom alone know how and when to give." [The vote on ratification was 46 to 23.]

"The THIRD PILLAR raised. A letter dated at New York, Dec. 20, 1787, received in town yesterday, has the following paragraph, which may be con-

sidered as authentic, viz: 'THE NEW CONSTITUTION will undoubtedly be adopted — DELAWARE, PENNSYLVANIA and NEW JERSEY, have ratified and confirmed it.'"

Ibid., Jan. 2, 1788. The editor "hopes before midsummer to give the glad tidings that not only NINE but TWELVE of the great pillars of the federal superstructure are raised, and the whole completed. LAUS DEO!"

Ibid. Speaks of certain mischiefs that "have been realized by the *American states* from the unqualified sovereignty of the individual governments."

[Note that then as now, *sovereignty* and *government*, were often confounded. No one ever denied that the people of the state were sovereign, and that they, as such bodies, were ordaining the constitution, and creating the government, which was to be administered by their own subjects. The so-called "sovereignty of the state," that, from its assumptions, excited much jealousy and opposition, was the state government — a mere creature or instrument of the real sovereignty. Moreover, it was often called "*the state*." It is the frequent occurrence of these and other confusions of terms, that afford such a fine opening for the tricks of exposition, so characteristic of the political writings of our country.]

Ibid., Jan. 2, 1788. In a very able article, which may have been written by Elbridge Gerry, he quotes Wilson, of Pennsylvania, as saying that "if the objection" [that the new plan consolidates the states] "is *a just objection, it will be strongly against the system*." [The writer quotes the phrase "consolidation of our union" — which Gen. Washington, "by unanimous order of the convention," stated in his letter to congress accompanying the federal plan, to be the object of the convention; and comments severely upon it. Unquestionably the word "consolidation" in this phrase, meant more solid, firm, and permanent, for the constitution was made, as the preamble says, "to form a more perfect union," i. e., *a more perfect union of states* than the other was; and "consolidation" can have no meaning incompatible with the complete integrity of the states. This very phrase, as well as the one quoted from the preamble, imply that the new union was to be of the same character as the old one — i. e. a federation of states. It can hardly escape the observation of the intelligent reader, that in all these extracts, *states*, and not fractions of a nation, are the actors, and the exclusive sources of ordaining power. The dupes of the Massachusetts school should weigh the fact.]

Ibid., Jan. 6, 1788. "The convention of New Jersey was composed of accomplished civilians, able judges, experienced generals, and honest farmers." As "the ground work of its proceedings," it "resolved that the federal constitution be read by sections," [each being fully debated until the whole had been examined,] "upon which the general question shall be taken; whether this convention, in the name and behalf of this state, do ratify and confirm the said constitution."

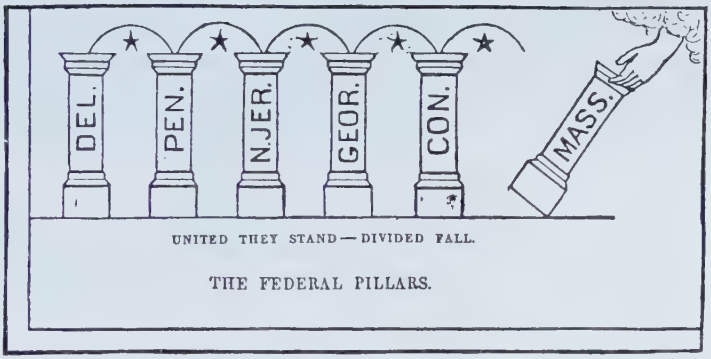
Ibid., Jan. 9, 1788. No. III. of an exceedingly able series of papers by "republican federalist," contains the following — after recognizing conventions as the organs of states for constitutional changes: "Of all compacts, a constitution or frame of government, is the most solemn and important, and should be strictly adhered to. The object of it is the preservation of that property which every individual in the community has in his *life, liberty*, and *estate*." [It is the great mass of these property rights, as well as each individual right, no matter how minute and insignificant, that the state was organized to conserve; and, to enable the state to do this, and to protect them in so doing, the federal constitution was built by them, as an outer wall, with towers and bastions; and it is manned *by them* for that purpose.]

Ibid. "The accession of our sister state, Connecticut, to the *new and effectual plan of confederation*, is a matter of real exultation to the friends of honesty and *peace*." The editor goes on to say, that if certain virtues, [which he enumerates] "have not forsaken the commonwealth, the convention must adopt the proposed constitution."

Fisher Ames, in the Massachusetts convention, is reported to have said:

"The people cannot exercise the powers of government in person, but, by their servants, they govern; they do not renounce their power, they do not sacrifice their rights; they become the true sovereigns of the country, when they delegate that power, which they cannot use themselves, to their trustees."

Ibid., Jan. 16, 1783. In this number is the following wood-cut. The hand erecting Massachusetts is probably intended for the Hand of Providence.



THE FEDERAL PILLARS.

Ibid. "A vessel arrived at Cape Ann, after a short passage from Georgia, confirms the pleasing intelligence, announced in our last, that that state has unanimously ratified the federal constitution. This is a FIFTH PILLAR added to the glorious fabrick. May Massachusetts rear the SIXTH." [Georgia was the 4th, Connecticut the 5th.]

"On Monday morning, the bells of this metropolis were rung on account of the pleasing intelligence that the state of Connecticut had added a FOURTH PILLAR to the GRAND REPUBLICAN SUPERSTRUCTURE — the FEDERAL CONSTITUTION. . . . The accession of our sister state Connecticut to the *new* and *effectual* plan of *confederation* etc. . . . If all sense of *justice*, *honor*, and *public faith*, and every principle of regard to the PEACE and HAPPINESS of the *united states*, have not forsaken this commonwealth, the convention must adopt the proposed constitution."

[The reader will please keep in mind that the italics, etc., are all in the original.]

Ibid., Jan. 19, 1788:

"THE WISH.

"I wish you all may live in peace,
May see the public discords cease,
Each state with speedy resolution,
Adopt the federal constitution,
Mechanic arts and trade revive,
And agriculture spread and thrive;
And peace and plenty hand in hand,
Once more may travel through the land," etc.

Ibid., Jan. 23, 1788. In convention Jan. 16.—Mr. Cabot said, the senate "is a representation of the sovereignty of the individual states"—"its members are delegated by the several state legislatures."

Said Mr. Parsons on the same occasion, "the sovereignty of the states is represented in the senate." He repeated it in a subsequent debate.

Hon. Mr. White said: "We ought to be jealous of our rulers;" "he would not trust a flock of Moseses, even."

Ibid. The editor says: "The Hon. convention have now come to the 8th section of the constitution, which specifies the POWERS with which congress shall be INVESTED."

[These extracts partake of the nature of contemporaneous expositions, and they directly contradict Story and Webster, as to the formation and nature of our polity. If the intelligent reader will carefully peruse all these extracts from the leading journals of Massachusetts, as well as the debates of the Massachusetts convention [II. Ell. Deb.] he will lose confidence in the *dicta* of the great expounder, and the great commentator. In those days, no nation was thought of, but such as might be made by the self-association of sovereign states. The constitution was their "supreme law," and the government was their creation and agency. The persons administering this government were to be the citizens and subjects of the states, elected by the states, and owing allegiance to the states. These assertions are susceptible of easy proof.]

[Massachusetts Centinel, Jan. 26, 1788.]

"Hampden" suggests, among other amendments, that the words, as to the jurisdiction of the federal courts: "between a state and citizens of another state," etc., be stricken out, because, "laying a state liable to be sued, robs it of all its sovereignty; and, in this case, may lay the several states liable to be sued for their public securities."

[Massachusetts was, *par excellence*, the stickler for the preservation of the absolute sovereignty of a state in the "union of states." In ratifying, she insisted on the amendment, that "all powers not expressly delegated" are "reserved to the several states," which was finally adopted, and it was her leading men, notably Gov. James Sullivan, Gov. John Hancock, and others, and the legislature, that initiated the amendment, depriving the federal government of even judicial coercion of a state. See amendment XI.]

Ibid., Feb. 2, 1788. Hon. Mr. Sedgwick said, in the convention of Massachusetts, that "if he believed the adoption of the proposed constitution would interfere with the state legislatures, he would be the last to vote for it." [In II. Ell. Deb. 77, a member quoted him as saying that "if he thought the constitution *consolidated* the union of the states, he would be the last man to vote for it."]

Gov. Bowdoin, in speaking of the objection that personal rights and state rights were endangered, said:

"With regard to rights, the whole constitution is a declaration of rights, which primarily and principally respect the general government intended to be formed by it. The rights of particular states and private citizens not being the object or subject of the constitution, are only incidentally mentioned. In regard to the former, it would require a volume to describe them, as they extend to every subject of legislation not included in the powers vested in congress; and in regard to the latter, as all government is founded on the relinquishment of personal rights in a certain degree, there was a clear impropriety in being very particular about them."

And Judge Parsons said the same thing in the same debate, viz: "The fed-

eral constitution establishes a government of the last description," [that is, a government of purely delegated powers,] "and, in this case, the people divest themselves of nothing." [This simply means that the people govern themselves; and is equivalent to the statement of Fisher Ames, quoted heretofore.]

Ibid. The editor, in noticing a decisive vote in the convention, says: "The Massachusettensian PILLAR is reared; but as the arch which will connect it with those heretofore erected, is not yet sprung, we cannot yet announce its ESTABLISHMENT, as one of the SUPPORTERS of the FEDERAL SUPERSTRUCTURE."

Ibid. contains a paraphrase of one of Æsop's fables signed "Pat," as follows:

THE BULLS AND THE LION.

A FABLE

Recommended to the serious consideration of the opposers of the new constitution.

Safe, on the Lion's old domain,
The bulls enjoy the flowery plain:
To conquer, oft the lion tried,
But sorely pushed on every side —
The monarch soon was taught to yield —
The bulls *united* kept the field.
With grief we read the dismal tale,
That art succeeds where strength does fail.
New schemes and trickings Leo tries
To make the sturdy bulls his prize;
And, by his jealous hints, and fears,
Sets all together by the ears.
His engines are not set in vain,
Suspicion agitates each brain;
They soon grow fearful of each other,
Each scorns and shuns his faithful brother,
Each feels his consequence his pride;
They doubt each other — they divide.
For want of friendship's powerful stay
The bulls become an easy prey;
The Lion sees his conquest done,
And slays the 13 one by one.
Thus *we* (it must appear to all),
UNITED STAND — DIVIDED FALL.

Ibid., Feb. 9, 1788, contains the following in large capitals: "RATIFICATION OF THE FEDERAL CONSTITUTION BY MASSACHUSETTS.

"The yeas and nays in the convention were as follows:

"Yeas —

"His Excellency, John Hancock, Esq., president." [Then follow the rest — footing up yeas 187 — nays 168.]

The same number contains an account of a jubilant procession, in which is the inevitable federal ship drawn by thirteen horses. Thirteen guns were fired, one for each sister.

[The same paper reproduces the wood-cut described heretofore, with Massachusetts erect and her arch sprung. The cut is preceded by the words: "THE GRAND FEDERAL EDIFICE;" and followed by the announcement that "the convention of this commonwealth, on Wednesday, 5 o'clock P. M., ASSENTED to, and, on Thursday, RATIFIED the constitution."] And in the editor's "Castalian fount" is an ode, and a "wreath is fixed on Massachusetts' head" for rati-

fying. The day is called "the glorious and ever-memorable 6th of February." One verse of the ode is as follows:

"And soon a rival day shall shine;
The task New Hampshire will be thine,
To give it equal fame;
Another pillar, raised by thee,
Will fill New England's sons with glee,
And crown thy finished name."

The next number, February 13, contains another row of pillars with a hand from a cloud [Providence?] raising New Hampshire.

It also contains a clever dialogue between a federalist and his neighbor, in which the former says: "The constitution, in the main, is a good one, and far better than 13 states could have been expected to make. I hope it will be well administered — am determined to be a good subject, until I find the contrary, and then I will take the best apparent method of redress."

"These jarring states to bind in union's band" is a line of another federal lyric.

Ibid., Feb. 26, 1788. It is announced that Georgia unanimously ratified the federal constitution. "Georgia is a very rising state, possessing an extensive territory, and is a great acquisition to the new confederacy."

Ibid., Feb. 20, 1788. "Some ideas," says a Hartford (Ct.) correspondent, "may be formed, whether the proposed constitution annihilates the sovereignty or respectability of the several states, from the following list of the convention of this state. In it, for ratification, were two governors, one lieutenant-governor, six assistants, four judges of the supreme court, etc."

Ibid., March 1st. In this number, the device of six federal pillars — the seventh about rising, is followed by "a new song, for federal mechanics," by Hon. Fras. Hopkinson. One of the verses is as follows:

"Up! up with the rafters, each frame is a state,
How nobly they rise, their span too how great;
From the North to the South, o'er the whole they extend,
And rest on the walls, while the walls they defend;
For our roof we will raise, and our song still shall be,
United as states, and as citizens free."

Ibid., March 5, 1788. This number contains a spirited addition to patriotic poetry, the last verse of which is:

"So here I end my federal song,
Composed of thirteen verses,
May agriculture flourish long,
And commerce fill our purses."
Yankee doodle, etc.

Ibid., March 12, 1788. "The landholder," No. 10, addresses the citizens of New Hampshire to show why, to preserve the safety and rights of the people of the state, said state should join the federation. "If there be any one state, more interested than the others, in the adoption of this system, it is New Hampshire. . . . When the hour for a permanent connection between the states is past, the teeth of the lion will be again made bare; and you must either be devoured, or become his jackal to hunt for prey in the other states."

In No. 11, speaking of the advantage of revenue laws, he says — "if you now form such a political connection with the other *states*, as will entitle you to a just share in that revenue they raise on commerce," etc.

Ibid., March 19. 1788: "A letter from Gen. Washington to a gentleman in this town [Boston] says, that from his information from various parts of the state, there is every prospect of the constitution being ratified by Virginia." [Note, that it is "by Virginia" and not by the fraction of a nation."]

"The states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware and Georgia, have ratified the constitution." ["The states" — not provinces or counties.]

Ibid., March 22: A letter from Gen. Washington says, the adoption by Massachusetts "will be influential in obtaining a favorable determination in the states" where it is yet pending. "No one can say what will be its fate here," but "I have no doubt of its being accepted."

"The assembly of Rhode Island has refused" "to call a convention for taking the federal constitution into consideration."

Ibid., April 30, 1788: Poetry addressed to the people of Virginia New Year's day, 1788, contains the following verse:

> "*Numbers vast* will own the plan,
> That secures the rights of man,
> Gives the *states* their destined place,
> High amidst the human race."

Ibid., May 10: "We have the best authority for asserting that the state of Georgia has ceded 50,000,000 acres to the united states, when the new constitution is in force."

Ibid., May 26, 1788: "Nothing further from South Carolina yet." "Virginia convention meets in a few days." "Little doubt is had that New Hampshire will ratify in a few days."

Extract from letter from leading character in South Carolina, May 1, 1788: "I rejoice in the establishment, as far as it depends on your state, of the federal constitution."

Ibid., June 7, 1788:

"We hope to-day to announce the eighth pillar of the federal edifice" — "the ratification of South Carolina."

"Yesterday the honorable legislature, agreeably to the constitution [of Massachusetts] made choice of the following gentlemen as delegates to represent this commonwealth in the congress of the united states: Adams, Gorham, Sedgwick, Otis, Thacher."

Ibid., June 11, 1788:

Announces accession of South Carolina as the "eighth pillar" of "the grand federal superstructure."

A gentleman of Virginia writes to a friend in Boston: "The federal constitution will be adopted by us. The reception and discussion in your state have removed much prejudice."

Ibid., June 21, 1788:

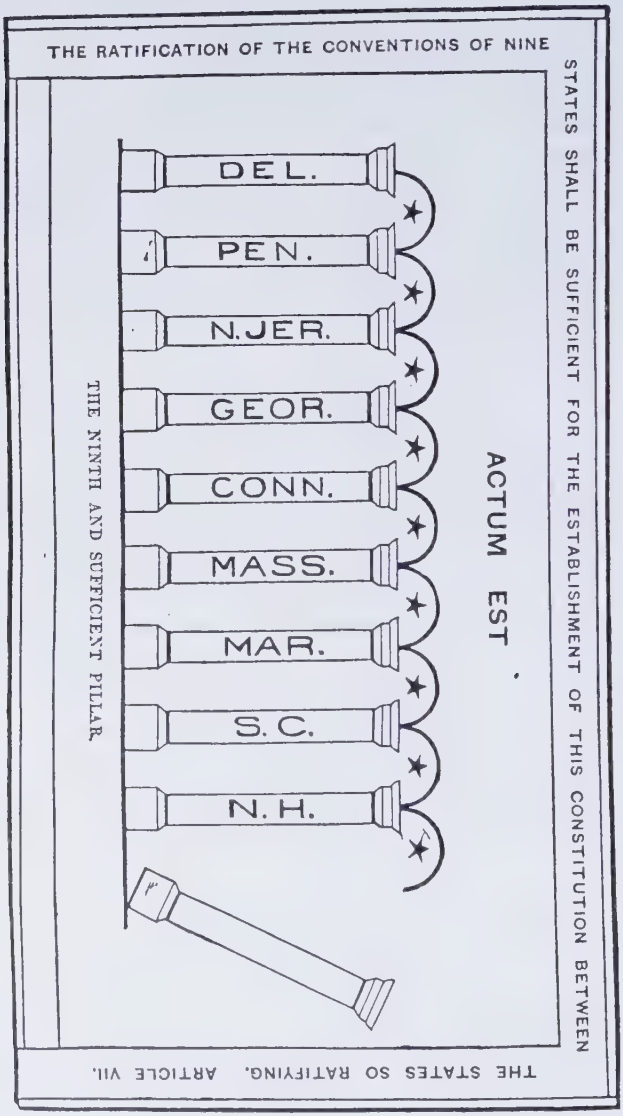
"A gentleman of the first distinction at New York," writes — "the accession of Virginia to the confederation, ceases to be a matter of doubt, and we are daily expecting to hear that the ninth pillar is raised."

Ibid., June 25, 1788:

In this number the federal edifice is reproduced with nine pillars up, and the tenth rising, — without a name, because it was uncertain which would be the next ratifier.

The seventh and characterizing article — ornamentally printed — forms the frame or border of the picture.

The editor then proceeds to say: "We felicitate our readers on the accession to the confederation of the state of New Hampshire, not only because it



completes the number of states necessary for the establishment of the constitution, but because it is a *frontier, a neighboring*, and to us really a *sister* state. It is now one of the *pillars* of the *great national dome*."

Ibid., July 2, 1788:

The editor thinks the governor of Rhode Island is about to convene the legislature upon the subject of calling a convention to consider the federal plan. "The weight in the federal senate, of Rhode Island, will be as great as that of the largest state. To preserve the proper balance of power in the national government, it will be expedient that Rhode Island, as well as *Vermont*, should accede to the *new confederation*." This extract is published in the Worcester *Spy* of July 10, 1788, as from a letter from a gentleman in New York.

The same number contains a song, sung in the grand procession at Portsmouth, in honor of ratification.

The following is the

2D VERSE.

"Nine federal states politically joined
With glorious rays our hemisphere adorn;
As splendid stars in amity combined,
Rise the auspicious harbingers of morn."

3D VERSE.

"Hail radiant constellation," etc.

4TH VERSE.

"Confederate justice here shall poise
Her equal balance," etc.

CHORUS.

"In rapturous lays,
Your voices raise,
Columbia's song,
In accents strong,
Shall echo to your joys, and dwell on every tongue."

Ibid., July 5th:

Contains a very able paper, addressed to the convention of New York, which repeatedly speaks of "the new confederacy" that is being formed.

And the same "*grand federal edifice*" is pictorially represented with the "10*th pillar*" — Virginia.

[Massachusetts Centinel, July 12, 1787.]

In reference to the rejection, or, rather, to the postponement of the ratification of the constitution by North Carolina, and other hindrances, which some people seemed to think discouraging, the editor says: "In time of war, the instrument for uniting the states was not accepted by the states for some years after it was submitted. This being the case, it was hardly to be expected that a similar instrument would, in a time of leisure and peace, be completed in a quarter of the time. A year hath not yet expired."

Ibid., July 16, 1788.

"In our next, we hope to announce the erection of the *eleventh pillar* in support of the *new roof*, in the accession to the confederation of the state of New York."

An account is given of "the *new roof* or *grand federal edifice*," in the federal procession at Philadelphia, 4th inst.: "The dome supported by 13 Corinthian columns" — "ten columns complete, three left unfinished" — "on the pedestals, the initials of the 13 American states."

"In the evening, the grand edifice, with the 10 states *now in union*, was brought back," etc.

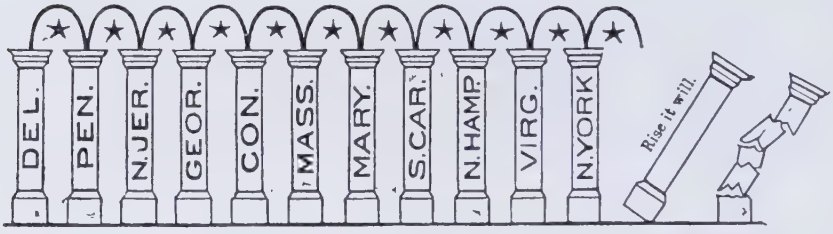
Ibid., Aug. 2, 1788.

The editor announces the news "just arrived" of the ratification of the federal constitution by "THE DELEGATES of the PEOPLE of the STATE of NEW YORK." [The capitals are his.]

The editor then proceeds to make his picture again — this time with eleven pillars, the last one being labelled N. York.

"REDEUNT SATURNIA REGNA.

On the erection of the eleventh pillar of the great national dome, we beg leave most sincerely to felicitate OUR DEAR COUNTRY."



THE FEDERAL EDIFICE.

The last pillar is intended for Rhode Island, who was then holding herself aloof, with "absolute sovereignty," — to use Mr. George T. Curtis' admission, — but politically, morally, and financially, much disordered.

"ELEVEN STARS in quick succession rise,
ELEVEN COLUMNS strike our wondering eyes,
Soon o'er the whole shall swell the beauteous dome,
Columbia's boast and freedom's hallowed home."

The following extracts are from the

MASSACHUSETTS SPY, OR THE WORCESTER GAZETTE.

This paper had been suspended during the Shays rebellion, and its publication was resumed with No. 783, Vol. XVII., April 3, 1788.

In this number of April 3, the printer tells the public, that "thanks to our present legislature," this paper is "at length restored to its constitutional liberty," "after a suspension of two years." "Heaven grant that the freedom of the press, on which depends the freedom of the people, may in the united states be ever guarded with a watchful eye, and defended from shackles of every form and shape, until the *final trump is played*."

A paragraph in the same number, shows that even the negroes of Massachusetts understood the distinctness of the states. One of them was tried for theft in some tribunal of their own, and the sentence was: "Fourteen tripe on he necked back, tirteen for united tates — one for brack company."

Ibid., April 10, 1788.

The editor says: "Delegates are to be elected (in North Carolina) to meet in convention first Monday in March, to deliberate and determine on the new

federal constitution, and if approved of by them, to ratify the same, on behalf of that state."

Extract from the account of the proceedings of the legislature: "The senate has not concurred, with the house, in restoring to the rights of citizenship, Shays, Day, and others."

Extract from a letter of John Adams to John Jay, Dec. 16, 1787, "as all the great principles necessary to order, liberty and safety, are respected in it, . . . I confess I hope to hear of its adoption by all the states." [Not by the nation.]

Ibid., June 12, 1788.

Extract from a North Carolina letter, dated May 14, 1788: "I venture to predict that the constitution will be adopted by a respectable majority of this state, for our convention will never be so mad as to *vote themselves out of the union*, and think of standing upon their own bottom a distinct nation, surrounded by powerful and confederated states."

[Nevertheless, North Carolina did, on August 1, 1788, reject the constitution by a vote, in convention, of 188 to 88, making it known, however, that she would accede when the amendments, which Massachusetts had proposed for the preservation of state integrity, should be adopted. Thereafter, to wit, on Nov. 21, 1789, feeling assured of the amendments, she held a convention and ratified.]

Ibid., June 19, 1788.

"Philadelphia, May 28. A correspondent, who desires *the adoption of the constitution* by every state, observes that the state of Georgia has granted 30,000,000 acres of land to the *new confederacy*, provided the adoption of nine states should take place — a tract four times as large as *old Massachusetts*, which at $\$\frac{3}{4}$ per acre will sink $20,000,000 — double the sum of unredeemed Continental loan office certificates."

The writer speaks of the above as a "tribute of respect to *the new confederacy*."

Ibid., July 10, 1788, is published a song, sung on the occasion of a procession at Portsmouth, at the time of celebrating the adoption of the constitution:

1ST VERSE.

"It comes! it comes! high-raise the song,
The bright procession moves along,
From pole to pole resound the NINE,
And distant worlds the chorus join."

Ibid., July 17, 1788. "In congress, July 2, 1788. The state of New Hampshire, having ratified the constitution, . . . and transmitted to congress . . . the same . . . the president reminded congress that this was the ninth ratification. . . . Whereupon . . . ordered, that the ratification, etc., be referred to a committee, to examine and report an act for putting the said constitution into operation, in pursuance of the resolution of the late federal convention."

Extract from a letter from a member of the convention at Richmond, to his friend in Boston, dated June 25: "I have now to congratulate you on the accession of Virginia to the new government; the final vote was taken this day, about 3 o'clock P. M. It was 89 to 79. A motion for previous amendment was negatived by 88 to 80. The form of ratification is prefixed by a declaration that all power, etc., (but I send you a copy)." He then speaks of a "discussion of twenty-four days, in which every clause of the plan was weighed and debated."

Ibid., Oct. 2, 1788. In this number, a well-written paper, signed "Alfred," "on the new federal government," says: "It requires no greater share of sagacity than the world gives us credit for, to foresee that thirteen or more different states, possessing separate sovereignty and independence, will very soon, as their numbers multiply, and their opulence increases, engage in civil broils and distressing contentions." He afterward speaks of the federal system as "a form of government which astonishes the political schools of Europe, and which, with a few amendments, will bestow peace and political security to the many millions for whose felicity the states have adopted it."

Ibid., Nov. 13, 1788. In the general court of Massachusetts, November 1, "the committee on the organization of the new government," whose duty it was to investigate and report upon the mode in which the state, and the people thereof, were to perform their constitutional functions in the new system.

The matter was reported on as follows in substance; these recommendations to be provided for by law of the state:

1. That the two houses, by joint ballot, choose the electors for President and Vice-President.

2. That the senators be chosen by the two houses, each having a negative on the other.

3. That "*the commonwealth*" be "divided into eight districts, and that the inhabitants of each should be authorized to choose one representative to congress."

The above shows that *old* Massachusetts contemplated acting in the federal system solely as a state — an independent sovereign; her officers, *pro hac vice*, being delegates, representatives, and, as she called them in her constitution, "the subjects of this state." The federal pact itself, calls them citizens of the state. She was to choose from among her own citizens and subjects, who owed exclusive *allegiance* to her, and obedience to her "supreme law" — the federal pact — all of her proportion of the officers of the three departments of the federal agency, except such subordinate functionaries as should be provided for by federal law — these to be chosen for her, and her federated sisters, from among their respective subjects, and exclusively by their authority.

The argument made by this long series of extracts from the principal journal of Massachusetts, and those from the Worcester Spy, is the most decisive that could be framed, for it shows precisely how the system was presented and advocated; and what the views and motives of the people were in adopting it. This argument destroys, without remedy, the theory of Story and Webster, for there is, in the whole series, (and the same may be affirmed of the federalist and Elliott's debates,) no sign whatever of the people of the united states, as a nation or great political community, ordaining a constitution, and therein establishing (to use Webster's phraseology) "a distribution of powers, between this, *their* general government, and *their* several state governments;" while on the other hand, it is proved, beyond controversy, that the American commonwealths of people, in a "convention of states" (as Hamilton called it), framed the plan; and that each state deliberated on it, in her own convention, having the absolute right to ratify or reject; and finally that each state adopted it, by vote, as a political body. The states, then, gave it all the life and force it ever had, or could justifiably have. Nay, more, not only does this compact of states provide for, direct, limit, and control, the federal government, but this said agency is personally composed of men who are alike members, citizens, and subjects, of the states; and who are not only in allegiance exclusively to the said states, but are elected by *them* to administer *their* general government — "the federal government of these states," as the federal convention unanimously called it. These states, as fully organized bodies of people — each one having every

characteristic of a nation — constituted whatever nation there is. They comprised all the people, and held all the territory, leaving out of their jurisdiction not an acre or a man to make a nation of.

The state and the federal constitutions, are alike the fundamental laws of the states — the latter being *their* "supreme law." Both are necessarily subordinate to the law-makers. A federal law operates, and a federal functionary has jurisdiction in, any state — New York, for instance — because it is the sovereign will of the said state, it being with her authority, that the federal government exists in her territory, and acts on her citizens or subjects. Strange as some may think it, there is nothing inconsistent with this view, in the records, history, and political writings of the country, which were contemporaneous with the formation of our federal polity. Everything shows the independent political action of the states, as sovereign bodies, in ordaining and establishing the constitution and their determination to preserve their sovereignty in the union; while not even a syllable shows any national action. The states are self-united as equals; they as self-associated are whatever nation there is; and the phrases, "united states," and "union of states," so often repeated in the federal pact, make, of themselves, an end of all honest controversy of the subject.

No. 2.

THE UNION OF STATES.

Extracts from the Virginia Gazette, published at Richmond, from May 31, 1787, to February 26, 1789.

[The Virginia Gazette, May 31, 1787.]

"Baltimore, May 11. Returns of the delegates appointed by the several states, (Connecticut and Rhode Island except,) to meet in GENERAL CONVENTION at Philadelphia, on Monday the 14th inst., for the purpose of revising the CONFEDERATION of the United States." Then follow the names.

Ibid., June 14, 1787. Richmond, June 14. We expected to have been able to entertain our readers with the proceedings of the federal convention; but we are sorry to inform them, that everything is carried on by them with greatest secrecy. We learn that all the states are now represented, except New Hampshire and Rhode Island.

[The Virginia Gazette, June 21, 1787.]

In stating the purposes of the great political movement, says: "To revise the confederation, and to fall upon a system of commercial regulations, which may tend to the revival and establishment of our credit, and the encouragement of our trade and manufactures, are objects of such magnitude, as to require the united wisdom of the continent." . . . And "to render the constitution of the federal government adequate to the exigencies of the union," is also stated to be a purpose.

Ibid., August 9, 1787. "Richmond, August 9. On the 26th ult., the federal convention having resolved upon the measures necessary to discharge their important trust, adjourned till Monday, the 6th inst., in order to give a com-

mittee appointed for that purpose, (viz., Mr. Randolph of Virginia, Mr. Gorham of Massachusetts, Mr. Ellsworth of Connecticut, Mr. Wilson of Pennsylvania, and Mr. Rutledge of South Carolina,) the time to arrange and systematize the materials which that honorable body have collected," etc.

Ibid., Aug. 30, 1787. "Richmond, August 30. The convention, we are informed, have unanimously agreed on a system for the future government of the united states, which will be speedily laid before the several legislatures, for their acceptance and ratification. What that system is, is not as yet known. . . . A correspondent observes, that, as there is so much frailty in human nature, the people from whom all power is derived under a purely republican system of government, when they are about to invest man with power and authority, even for the necessary purposes of government, [require] that it be strictly guarded and limited; so that it be not abused to the oppression of those who conferred it. Hence, from neglect or inattention, in fixing those essential checks and restraints on rulers and governors; it is that we behold in the world so small a portion of mankind, who are not tyrants, or slaves, oppressors, or oppressed."

Ibid., Sept. 27, 1787. This number contains the proposed federal constitution, with the resolutions concerning the mode of ratification and carrying into effect; and the letter of General Washington to the President of congress, sent by unanimous order of the convention.

Ibid., Oct. 4, 1787. This number contains a petition of the people of Philadelphia and suburbs, to the general assembly of Pennsylvania as follows:

"That the petitioners have seen the proposed constitution, and that "as they conceive it to be wisely calculated to form a perfect union of the states, as well as to secure to themselves and posterity the blessings of peace, liberty, and safety, they earnestly desire that the said constitution may be adopted as speedily as possible, by the state of Pennsylvania, in the manner recommended by the convention."

Ibid., Oct. 4, 1787. This number presents the following procedure in congress:

"The united states in congress assembled. Friday, September 28, 1787. Present: New Hampshire, Mass., Conn., N. Y., N. J., Pa., Del., Va., N. C., S. C. and Georgia; and from Maryland, Mr. Ross.

"Congress having received the report of the convention, lately assembled at Philadelphia, Resolved unanimously, That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state, by the people thereof, in conformity to the resolves of the convention, made and provided in that case.

"Charles Thompson, *Secretary*."

Ibid., Nov. 1, 1787. This number states that the house of delegates of Virginia has unanimously voted for calling a convention, to consider the constitution, and that the matter is now before the senate. In the house of delegates "the only question seemed to be, whether the convention should be left at large to propose amendments to the constitution, in case they should deem it advisable; and after a short debate, it was agreed, with unanimity, that the convention could not be restrained, in the discussion of this momentous business, from accepting or rejecting it, or proposing amendments, as they should see fit. . . . A change of one or two exceptionable, or doubtful clauses; may be made to the advantage of all the states," etc.

Ibid., Nov. 22, 1787. A Connecticut correspondent observes that, "having received the new constitution in the regular channel, we have . . . taken the proper measures for calling a state convention, and determining upon the new plan of government."

Ibid., Nov. 29, 1787. It is stated that, "when the illustrious Washington was about to sign the constitution as president of the convention, he paused with pen in hand, and said: '*Should the states reject this excellent constitution, the probability is an opportunity will never again offer to cancel [?] another in peace: the next will be drawn in blood.*'"

Ibid., Dec. 20, 1787. The first ratification of the federal constitution — that by Delaware — is presented in this number thus: "Wilmington, December 12. . . . The new Federal constitution was ratified by unanimous vote, on Friday, and the ratification signed by every member as follows:

"We the deputies of the people of the Delaware state, in convention met, having taken into our serious consideration the federal constitution, proposed and agreed upon by the deputies of the united states, in a general convention held at the city of Philadelphia, on the 17th of September, A. D., 1787, HAVE approved, assented to, ratified and confirmed, and by these presents DO, in virtue of the power and authority to us given for that purpose, for, and in behalf of ourselves and our constituents, fully, freely and entirely approve of, assent to, ratify, and confirm the said constitution.

"Done in convention, the seventh day of December, in the year of our Lord one thousand seven hundred and eighty-seven."

The editor says: "The convention agreed to cede 10 miles square, with the right of exclusive legislation, to congress for seat of government."

He also says that, "while Delaware acted thus speedily, the convention of Pennsylvania is debating the ground by inches, having been in session almost a month, and being yet engaged on the first article."

Ibid., Dec. 27, 1787. Gives an account of a meeting of the inhabitants of Pittsburg, Pa., "for the special purpose of taking the sense of this town with respect to the system of confederate government, proposed by the late convention at Philadelphia. General John Gibson in the chair."

"On the 12th instant, the federal constitution was approved of by the state of Pennsylvania, by a majority of 23 members."

Ibid., Jan. 3, 1788. "Boston, Dec. 7. The disunited states of America, at this all important crisis, may be fitly compared to 13 distinct, separate, independent, unsupported columns, . . . the glorious frame of government for the united states presents itself to view — the columns appear with additional lustre; their use and design are fully understood; rising from their solid pedestals, they receive the heaven-descended DOME, supporting and supported by the noble structure."

In the preamble of an act of the legislature of Virginia, it is stated that, "the proceedings of the federal convention [are to] be submitted to a convention of the people, for their full and free investigation, discussion and decision."

Ibid., Jan. 31, 1788. "We learn that, in the course of this month the states of New Hampshire and Connecticut have adopted the proposed federal constitution — the latter by a majority of 127 votes. Five states have now ratified the federal government, viz: Del., Pa., N. J., Ct., and N. H." [It was then a mistake as to the last. See the extract from the number for March 20, *infra*.]

At an "elegant supper" of the federalists, in Carlisle, Pa., (after a riot by the anti-federalists, during which Chief Justice McKean and James Wilson were burned in effigy,) "the following toasts were drank: 1. The federal con-

stitution; 2. General Washington and the federal constitution; 3. The states who acceded to the federal constitution; 4. A speedy accession and ratification of the constitution by all the states." [Note the words "federal" and "accede."]

Ibid., Feb. 14, 1788. At a dinner in Richmond, on the anniversary of Gen. Washington's birthday, one of the toasts was: "The congress — may the virtues of the first, be revived by the adoption of a happy federal constitution."

"A northern paper mentions the adoption of the federal constitution by the state of Georgia."

[Virginia Gazette, Feb. 28, 1788.]

Under date of "Boston, February 4," is given the ratification by the state of Massachusetts, with her proposed amendments — nine in number — the first being as follows: "That it be explicitly declared that, all powers not expressly delegated to congress, are reserved to the several states, to be by them exercised."

"And the convention do, in the name and behalf of the people of this commonwealth, enjoin it upon their representative in congress, at all times," to urge the adoption of said amendments.

Says the editor: "With the highest satisfaction we announce to the public that, the convention of the state of Massachusetts adopted the new constitution on the 6th instant, by a majority of 19; 187 yeas — 168 nays.

"The legislature of South Carolina have appointed the 12th of May next for the meeting of their convention, to decide on the new federal constitution."

The same paper presents the ratification of Georgia, in the words and figures following:

"Augusta, January 5. We have the pleasure to announce to the public that, on Wednesday last, the convention of this state unanimously ratified the federal constitution, in the words following, viz:

"STATE OF GEORGIA, IN CONVENTION, Wednesday, January 2, 1788. We the delegates of the people of the state of Georgia, in convention met, having taken into our serious consideration the federal constitution, agreed upon and proposed by the deputies of the united states in general convention," etc., "have assented to, ratified, and adopted, and by these presents do, in virtue of the powers and authority to us given, by the people of the said state for that purpose, for, and in behalf of, ourselves and constituents, fully and entirely assent to, ratify and adopt the said constitution, which is hereunto annexed under the great seal of the said state. DONE in convention, at Augusta, in the said state, January 2, 1788."

Ibid., March 6, 1788. Extract from letter from Charleston, S. C., January 22: "As to the new constitution, I hope it will be adopted with amendments by this state; but the opposition is heavy and increasing."

Ibid., March 13, 1788. "We shall very soon reckon South Carolina among the members of the new confederacy."

A letter from Wilmington contains congratulations "on the ratification of the federal constitution, by the state of Massachusetts."

A Yankee Doodle song winds up with the following:

"So here I end my federal song,
Composed of thirteen verses,
May agriculture flourish long,
And commerce fill our purses.
Yankee doodle keep it up
Yankee doodle dandy;
Mind the music and the step,
And with the girls be handy."

Ibid., March 20, 1788. Contains advices from New Hampshire, showing that, "as in the convention there were 54 against and 51 for the federal constitution, an adjournment till June was procured, it being hoped that some of the 40 towns that had instructed their delegates to vote against, would withdraw such instructions; and it is hoped that the convention at the session will adopt a constitution, so replete with benefits to New Hampshire, as well as the union in general."

Ibid., April 3, 1788. At a convention begun and held for the District of Kentucky, at Danville, Sept. 17, 1787, it was resolved that this convention fix Dec. 31, 1788, as the time when "the authority of the commonwealth of Virginia, and of its laws, over the District of Kentucky, shall cease and determine forever, under the exception specified in the act concerning the erection of Kentucky into an independent state.

"Resolved, as the opinion of this convention, that the convention shall be elected with full power and authority to frame and establish a fundamental constitution of government for the proposed state, and to declare what laws shall be in force therein, until the same be abrogated, or altered by the legislative authority acting under the constitution so to be framed and established."

Ibid., May 8, 1788. A correspondent, writing from Annapolis, Md., says that "on the 21st instant, the convention appointed by the citizens of this state, for the purpose of considering the constitution proposed by the general conventions, for the government of the united states, met at Annapolis. . . . Maryland * has opened her bosom to the embraces of her sister states; has erected the seventh pillar, upon which will be reared the glorious fabric of American greatness. . . . O! may the august temple of freedom soon be supported by 13 pillars, with its gates unfolded to every part of the creation."

A committee of 13 was appointed to state amendments, which the convention would subsequently recommend to the people, if deemed necessary. The ratification, however, was unqualified.

The first was, "that it be declared that all persons entrusted with the legislative or executive powers of government, are the trustees and servants of the public, and, as such, accountable for their conduct: Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to object to, reform the old, or establish a new government," etc, etc.

The 18th was, that "congress shall exercise no power but what is expressly delegated by this constitution."

At a federal procession, the following toasts were drunk: " . . . 4. The seven adopting states of the federal constitution; 5. A speedy ratification, by the remaining six, without amendments."

And at a dinner given to the convention, the following was the thirteenth toast: "May all the states of America join heartily in adopting, and make effectual, the proposed federal government."

Ibid., June 5, 1788. This number contains a very well written and able address — copied from the Pennsylvania Gazette — to the members of the convention of Virginia. [It must have been written by Tench Coxe — though the American Museum publishes a different one, addressed as above — James Wilson, Judge McKean, or some other leading constitutionist.]

He speaks of the "determination, which is to call the American union once more into political existence."

Alluding to the objection, "that your populous state will not be properly represented in the federal senate" he says: "Permit me to remind you that while you have but one vote of thirteen in the present union, you will have twelve of 91 in the new confederacy."

Further along, taking it for granted the nascent state of Kentucky will act with Virginia, he says: "It will be proper to consider too, the effect of the erection of Kentucky into a separate state, and of her becoming another member of the new confederacy."

"Should the present attempt to infuse new vigor into the general government, fail of success, partial confederacies must at once follow."

He then supposes a case wherein "Virginia rejects the proposed constitution, and Georgia, South Carolina, and Maryland, are members of the new confederacy."

He says further, Virginia, "of all the members of the union, has the least cause of complaint," and speaks of the prospect of Kentucky becoming "an independent member of the American union."

[Virginia Gazette, June 12, 1788.]

"BALTIMORE, June 3. The sloop George, Capt. Chase, which carried the account of the ratification of the federal constitution by this state, to South Carolina, returned on Saturday, and brought the following interesting information: 'On the 23d instant, at five o'clock in the evening, the question was put, that the convention assent to, and ratify, the federal constitution — for the united states of America, upon which the vote stood as follows: For the ratification 149 — against 73 — majority 76.'"

"There was a discharge of artillery from FEDERAL HILL, on Saturday evening, at 5 o'clock, IN HONOR OF THE STATE OF SOUTH CAROLINA."

"A number of gentlemen convened at Grant's tavern," and drank the following among other toasts: "1. The state of South Carolina; 2. The South Carolina convention; 3. Our sister Virginia — may she soon complete the arch of the grand federal building; 4. May the noble spirits of the minorities of the conventions of Massachusetts and South Carolina, be imitated by the opposers of the federal constitution," etc.

The same number says that, "the beautiful little ship Federalist [the same that had in a recent procession been manned by 13 men; drawn by 13 horses, and saluted by 13 guns] . . . sailed for Mount Vernon! Capt. Barney has the honor to present her to the illustrious farmer, who owns that spot, as an offering from the merchants, expressive of their veneration of his services and federalism."

Ibid., June 19, 1788. The editor copies from a Philadelphia paper the following extract from a letter: "New Hampshire is well disposed, and will have her convention but a few days in session before she ratifies."

He also copies some interesting observations and reflections from a New York writer — the following being *apropos:* ". . . our warmest friends and patriots, having been instrumental to our independence, are endeavoring, . . . by the adoption of a new system of government, to place these thirteen states upon a broad and lasting foundation, that shall stand the shocks of time, diffuse the blessings of free and universal trade, command respect and homage from the surrounding world, and transmit to posterity, unimpaired, those sacred rights unto which themselves were born."

The paper also announces the arrival of "the ship Federalist at Mount Vernon, on Sunday evening, the 3d instant," and her being "saluted with eight guns, being one for every adopting state."

The Virginia convention is reported to be closely investigating the constitution; and it is said that "their constituents and posterity will applaud the assiduity and attention they have shown to this interesting subject. They have now arrived to the article respecting the executive. It is yet impossible to determine on which side the majority will be."

The same paper contains the ratification of South Carolina; the amendments proposed by her — seconding Massachusetts; her federal procession, dinner *al fresco*, etc, etc.

The ratification is as follows:

"In convention of the people of the state of South Carolina, by their representatives held in the city of Charleston [from the 12th to the 23d of May, 1788].

The convention, having maturely considered the constitution, or form of government, reported to Congress by the convention of delegates from the united states of America, and submitted to them by a resolution of the legislature of this state, passed the 17th and 18th days of February last, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to the people of the said united states and their posterity, DO, in the name and behalf of the people of this state, hereby assent to and ratify the said constitution. Done in convention, the 23d of May, A. D., 1788, and of the independence of the united states of America, the twelfth.

THOMAS PINCKNEY, [L. S.]
President.

ATTEST: JOHN S. DART, [L. S.]
Secretary.

The convention also declared formally that, "it is essential to the preservation of the rights reserved to the several states, and the freedom of the people under the operations of a general government, that the right of prescribing the time, place and manner of holding their elections to the federal legislature, should be forever inseparably annexed to the sovereignty of the several states," except — the declaration goes on to say — where the state legislature shall neglect to perform the same, according to the tenor of the federal constitution, the federal government may interfere as authorized therein: — this of course would be by virtue of the state's authority.

"This convention doth also declare that no section, or paragraph, of the said constitution warrants a construction that the states do not retain every power not expressly relinquished by them, and vested in the general government of the union."

"Resolved, that it be a standing instruction to all such delegates as may hereafter be elected to represent this state in the general government, to exert their utmost abilities and influence to effect an alteration of the constitution conformable to the aforegoing resolutions."

[Virginia Gazette, June 26, 1788.]

It is announced that, "yesterday the grand question came on before the Honorable, the convention of this state, for the ratification of the federal constitution," and that the vote was 89 for, and 79 against ratification, also that 17 or 18 members were appointed a committee to prepare amendments to recommend for future adoption.

Ibid., July 3, 1788. In this number is printed the act of ratification of Virginia, also 20 articles for a bill of rights, and 21 amendments which the convention desired should be added to the federal constitution — they, "in the name and behalf of the people of this commonwealth," enjoining it upon all representatives in congress to exert themselves continually to have them ratified, and to conform to the spirit of them, as far as the federal constitution would allow, in all laws that might be meanwhile passed.

The first amendment proposed by Virginia is the same that Massachusetts originated, viz: "That each state in the union shall respectively retain every

power, jurisdiction, and right which is not by this constitution delegated to the congress of the united states, or to the departments of the federal government."

The act of ratification is as follows:

"VIRGINIA, to-wit: We the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the general assembly, and now met in convention, having fully and freely investigated and discussed the proceedings of the federal convention, and being prepared as well as the most mature deliberation hath enabled us, to decide thereon, DO, in the name and behalf of the people of Virginia, declare and make known that these powers granted under the constitution, being derived from the people of the united states, may be resumed by them, whensoever the same shall be perverted to their injury, or oppression, and that every power not granted thereby remains with them and with their will: That, therefore, no right of any denomination can be cancelled, abridged, restrained, or modified by the congress, by the senate, or house of representatives, acting in any capacity, by the president, or any department, or officer of the united states, except in those instances in which power is given by the constitution for those purposes. That among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the united states.

"With these impressions, with a solemn appeal to the Searcher of hearts for the purity of our intentions, and under the conviction that, whatever imperfections may exist in the constitution, ought rather to be examined in the mode prescribed therein, than to bring the union into danger, by a delay, with a hope of obtaining amendments previous to the ratification: —

"We, the said delegates, in the name and in behalf of the people of Virginia, do by these presents, assent to, and ratify the said constitution, recommended on the 17th day of September, 1787, by the federal convention, for the government of the united states; hereby announcing to all those whom it may concern, that the said constitution is binding on the said PEOPLE."

In the same number is the following extract from a letter from New Hampshire, dated June 21, 1788: "I have the great pleasure of informing you that this state has this day adopted the federal constitution: This important question was carried by a majority of eleven — ayes 57 — nays 46."

Ibid., July 24, 1788. A letter from London speaks of "the constitution agreed on by the convention, and proposed to the states for their acceptance and ratification;" and the hope is expressed that as everything is devised "for securing their liberties, for the establishment of the public credit, and for promoting the peace and harmony of the states . . . none will be so wanting as to reject a code which appears so fraught with every blessing."

In the news from Boston is an item about Providence and Newport, R. I., celebrating "the ratification of the constitution by New Hampshire." In the former several salutes were fired on Federal Hill, and the college boys "named the beautiful green around the college, FEDERAL PARADE."

In the same number, is a long report of the proceedings in the convention of New York, Jay, Hamilton, Duane, Livingston, and others, debating.

In the course of the report it is stated that, in the afternoon a considerable number of the federalists had a meeting "to congratulate each other on the happy news from Virginia;" and "they fired ten cannon in honor of the ten adopting states."

The ratification of Virginia seemed to have a favorable influence: "The spirit of warm contention" "between the parties in the convention" seemed to subside, and it is stated that "the convention are now framing their objections to the constitution for amendments; it is supposed they will be similar to those of Virginia."

It is further stated that, accounts from New York indicate "that the final question was to have been taken in the honorable convention yesterday," and that "the constitution would be carried in the same mode as by Virginia."

In the same number is a letter dated July 7, 1788, from a country girl in Philadelphia, to her sister in Reading, in which she speaks of a procession she witnessed: ". . . Then came several arm in arm, bearing flags with Delaware, Va., S. C., Conn., etc., painted in large letters on them — signifying the propriety of union among us; of which I cannot understand the meaning, as we were all united before, and this may tend to disunite us."

A letter from N. Y., July 14, says: "The last accounts from our convention are unfavorable. . . . I fear their mode of (what they call an) adoption will amount to a rejection. Should they reject, commotions will ensue."

[Virginia Gazette, July 31, 1788.]

A letter from Poughkeepsie, dated July 11, says: "This morning Mr. Jay brought forward the grand question, by a resolution for adopting the constitution. He spoke forcibly and commanded great attention. . . . The Chancellor also spoke. . . . Our worthy chief justice; also Mr. Smith, Mr. Lansing, and the governor, spoke against the resolution; and from what fell from them, they seem determined to support a conditional adoption. This the federalists consider a rejection under another name, and no doubt will protest against it."

Ibid., Aug. 7, 1788. "New York, July 12. From the Independent Journal Extraordinary, New York, Monday, July 28, 1788. On Saturday evening, about nine o'clock, arrived the joyful tidings of the adoption of the new constitution, . . . yeas 30, nays 25 — majority 5." [This is a mistake — the vote was 30 to 27, majority 3.] The account goes on to state that bells were rung and guns fired. The "federal ship Hamilton" fired a salute; general joy prevailed and several malcontents "drank freely of the federal bowl," and declared themselves "reconciled to the new constitution."

The same number contains a letter from Providence which says: "The opposers of the new constitution in this state feel beaten and are bitter." . . . The writer further says that, though the people of Providence "have not celebrated the ratification of the constitution by ten states, . . . yet there is no town on the Continent whose inhabitants are more universally federal," etc.

Ibid., Aug. 14, 1788. "*Ratification of the constitution by the convention of the state of New York.*

"We, the delegates of the people of the state of New York, duly elected and met in convention, having maturely considered the constitution for the united states of America . . . in the name and in the behalf of the people of the state of New York, do, by these presents, assent to, and ratify the said constitution."

Ibid., Aug. 28, 1788. "A Petersburg paper says the convention of the state of North Carolina have not actually rejected the constitution, but have proposed a bill of rights and amendments," intending to adopt when the amendments should be made; all of which was agreed to by a majority of 102 — yeas 184, nays 82. The opinion of the convention is "that congress will call a general convention to consider proposed amendments," and that they "will be submitted to conventions in the several states." "The convention showed every disposition to promote the interest of the union, . . . and, perceiving exceptions in the new constitution, they thought themselves justifiable in post-

poning the ultimate decision of the important question until it should be reconsidered by the several states, and such objections removed as might be found necessary to the preservation of the union."

Ibid., Sept. 4, 1788. This number contains the following:

"STATE OF NORTH CAROLINA.

"In CONVENTION, Aug. 2, 1788. Resolved that a declaration of rights, asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most ambiguous and exceptionable parts of the said constitution of government, ought to be laid before congress, or the convention of the states that shall, or may be called for the purpose of amending the said constitution, for their consideration, previous to the ratification of the constitution aforesaid, on the part of the state of North Carolina."

There are 20 declarations of right and 26 amendments proposed. The first amendment is as follows: "That each state in the union shall respectively retain every power, jurisdiction and right, which is not, by this constitution, delegated to the congress of the united states, or to the departments of the federal government."

Ibid., Sept. 18, 1788. A letter of a correspondent of a Philadelphia paper asks as follows: "Why have not congress complied with the recommendation of the federal convention in organizing the new government, when adopted by NINE states? The plan proposed by that august body, has been re-echoed by eleven states, a considerable while since, yet, strange to tell! (in a republican government) the great voice of the people has not been respected by our rulers."

The same number contains an able article, signed "*Solon, Jr.*," from the Providence Gazette:

". . . Many of the people, and some respectable states in the union, think the new constitution needs amendments. The ratification of it by the state of New York, bears a singular complexion, and North Carolina has refused to ratify it." He then says, the making of these amendments "must be done by the states under the old confederation, or as an operation of the new constitution. Eleven states having ratified the constitution unconditionally, it is not likely that they will so far recede from that measure, as to humor the remaining two states, in holding a convention under the old confederation."

Ibid., Oct. 9, 1788. Extract from the letter of a gentleman in London, dated July 26, 1788: "I suppose before this time, nine states at least will have adopted the new constitution."

Ibid., Nov. 6, 1788. "The general assembly [of Virginia] have taken measures to organize the new government. They have resolved to lay off the state into districts," each to "appoint" a representative. "Saturday next the senators are to be elected." It is also stated that the house of delegates, by a great majority, resolved that "an application be made to the congress of the new government to call a convention of the states to take into their consideration the defects of the new constitution."

Ibid., Nov. 13, 1788. "A bill has passed the house of delegates, for laying off the commonwealth into twelve districts, for the choice of electors to elect the president of the national government."

"The honorable Richard Henry Lee and William Grayson, esquires, were elected members of the senate from this state."

[Virginia Gazette, December 4, 1788.]

The Newport Herald says a motion was made in the general assembly of Rhode Island, "for the appointment of a convention to consider the proposed constitution." The motion was lost by 40 nays to 14 yeas.

"It appears," says the editor, "that the legislature are determined to hazard the consequences of a separation from the union."

Ibid., Dec. 25, 1788. A late London paper is quoted as follows: "By the last account seven of the states had acceded to the plan; . . . no doubt is entertained of the concurrence of South Carolina and Virginia. The congress will soon perfect the constitution of the confederated republic."

Charles Carroll (of Carrollton) and John Henry are — so the editor says — elected "SENATORS in the new CONGRESS" from Maryland.

Ibid., Feb. 5, 1789. The editor says New York, for some reason, "will have no agency in the choice of those important officers, the president and vice-president; nor will she be represented in that body where her most important interests will be at stake, the senate of the united states."

"Yesterday 10 of the electors of this state met at the capitol for the purpose of electing a president and vice-president; the ballots stood as follows:

"Gen. Washington, president, 10; John Adams, vice-president, 5; Henry Clinton, vice-president, 3; John Hancock, vice-president, 1; John Jay, vice-president, 1.

"The following gentlemen are elected representatives in the congress of the united states for this state, viz: John Page, James Madison, Jr., Samuel Griffin, Theodorick Bland, Andrew Moore, Alexander White and Richard B. Lee, esquires."

Ibid., Feb. 19, 1789. "A gentleman in Georgia thus writes to a friend in Rhode Island: 'Our old state constitution, which, like that of Pennsylvania, has a single house of assembly, is found so defective, that a convention to frame a new one is ordered. Our present ideas are that, the new one shall be nearly similar to the new federal constitution. I am sorry to hear that your state still continues averse to the new government?'"

Ibid., Feb. 26, 1789. "Philadelphia, Feb. 6. The ten federal electors chosen by this state, gave ten votes for Gen. Washington, as president, and eight for Hon. John Adams, as vice-president."

No. 3.

THE UNION OF STATES.

Extracts from the American Museum, from January, 1787, to July, 1789.

The American Museum, or Repository of Ancient and modern fugitive pieces. Matthew Carey. Philadelphia: Carey, Stewart & Co.

This plan of preserving valuable papers, etc., was that of Dr. Franklin. It was also highly approved by Gen. Washington.

[American Museum, January, 1787.]

In an address to the people of the United States, by Benjamin Rush, M. D., "to suggest the defects of the Confederation" he says: "they consist 1st, In

the defect of coercive powers; 2d, In the defect of an exclusive power to issue paper money and regulate commerce; 3d, In vesting the sovereign power of the United States in a single legislature; and 4th, In the too frequent rotation of its members."

As to the 3d he says: "To remedy this, let the supreme federal power be divided, like the legislatures of most of our States, into two distinct independent branches. Let one of them be styled the council of the States, and the other the assembly of the States. Let the first consist of a single delegate, and the 2d of 2, 3, or 4 delegates, chosen annually by each State. Let the President be chosen annually by joint ballot of both houses."

He continues: "The people of America have mistaken the meaning of the word sovereignty. Hence, each State pretends to be *sovereign*. In Europe, it is applied only to those States which possess the power of making war and peace, of forming treaties and the like. As this power belongs only to Congress, they are the only *sovereign* power in the United States," [the above is a specimen of the error of some few men of that day. Rufus King was one of them. They seemed to forget that all the States just then declared themselves to be each sovereign, and that the Congress only had power *delegated* from the States — and was thus an agency].

He continues: "We commit a similar mistake in our ideas of the word independent. No individual State as such has any claim to independence. She is independent only in a union with her sister States in Congress." [That union was voluntary, and there was no power above a State to force it to remain. She was as free and independent in the union as out — as she was only bound by her own will; the union being a voluntary one. Dr. Rush was then great in his profession, but not so great in statesmanship. He took a correct view after its adoption. See his letter to Dr. Ramsey, in the American Museum for May, 1788, *post* p. 45.]

Observations on the propriety of investing Congress with power to regulate the trade of the United States. By William Barton, Esq. American Museum for January, 1787.

"If on the one hand, this measure should be found to encroach too far on the sovereignty and rights of the several states, individually, there can be no doubt that it ought to be rejected. But if, on the other hand, nothing of that kind is to be apprehended, and it can be made evident that it would be attended with the happiest consequences to every State in the union, we may conclude that none but persons inimical to us, or contracted speculative politicians will give any opposition. . . .

". . . Every State is, with respect to its own police, distinctly considered free, sovereign and independent, and as a component part of the United States, is also free, sovereign and independent, as the united states of America form one grand entire republic, composed of a number of small ones, confederated for their common safety and advantage, . . . the supreme sovereign authority of the whole, ought most undoubtedly to be lodged in Congress; and that body should possess such powers and privileges, not incompatible with the happiness of a free people, as usually appertain to sovereignty, in order to enable them to direct the common concerns of the united states upon UNIFORM principles, so as to afford EQUAL advantages to each, and give energy to the whole. . . .

"As the UNITED STATES only, are we politically known to other powers; as such we send and receive ambassadors, enter into treaties and alliances, declare war, proclaim peace, etc., etc. These and others of equal importance, are powers with which we have invested the united states in congress assembled;

and yet it is said that to allow that delegated body a right to regulate the TRADE of the united states, is too great a power to be entrusted to them."

Ibid., for April, 1787.

A distinguished and able writer, Dr. Price, says: "Without doubt the powers of congress must be enlarged. In particular, a power must be given it to collect on certain emergencies the force of the confederacy, and to employ it in carrying its decisions into execution. A state against which a decision is made, will yield of course, when it knows that such a force exists, and that it allows no hope from resistance."

Same writer says: "The credit of the united states, their strength, their respectableness abroad, their liberty at home, and even their existence depend, on the preservation of a firm political union: and such an union cannot be preserved without giving all possible weight and energy to that delegation which constitutes the union."

Extract from the address of the convention, held at Annapolis: of "the commissioners from the said states [of Virginia, Delaware, Pennsylvania, New Jersey and New York]. Commissioners were also appointed by New Hampshire, Massachusetts, Rhode Island, and North Carolina, but they did not attend. None appointed by Connecticut, Maryland, South Carolina, or Georgia." They recommend the convention at Philadelphia, 2d Monday in May next, "to take into consideration the situation of the united states, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the union, and to report such an act, for that purpose, to the United States, in Congress assembled, as when agreed to by them, and afterwards confirmed by the legislature of every state, will effectually provide for the same."

Extract from an able paper, entitled "a view of the federal government of America; its defects and a proposed remedy," by "a Bostonian."

The writer says "there are three grand immutable principles of a good government," "the legislative, the judicial and the executive. What ciphers those legislators must be, who cannot bring their own laws into judicial operation, and how trifling are those decisions which cannot be enforced."

After illustrating the defect of the federal government, from wanting judicial and executive authority to effectuate its acts, he says: "Let us then strengthen our federal government; let it be possessed of the three principles in full extent; and let us condition, that congress shall exercise due authority over themselves: legislative, judicial and executive powers may be given to that body without endangering the liberty of the subject, since by a right of recall, the states can dissolve this authority the moment it is abused: but, where legislators in due rotation are governors, and subjects, there seems little danger of such abuse. . . .

"By giving a supreme executive power to congress in all cases which relate to the general good, we should only give that power to ourselves; for the individuals of the united states, sit there in the persons of their delegates, who instead of masters, are honorable servants, dependent on the approbation, though supported by the confidence, of their constituents.

"It is an adopted maxim throughout America, that none of the states can be separately governed without a due exercise of legislative, judicial, and executive authority. How then can it be expected that all should be governed collectively by simple recommendations? . . .

"While the mode of representation in the different states is incorrupt, congress cannot abuse its powers; because it is itself the very essence of such representations."

Another writer, advocating the strengthening of the federation with more power in the common head, — i. e. 'a more perfect union,' — says: "then shall harmony and concord subsist between the thirteen American republics, which, when ruled under this common head, will be fully efficient" [to do a number of things which he enumerates].

He then notes the apprehension — to show its absurdity — "that Congress, when vested with so extensive authority, might employ for enslaving the states that power which has been conferred upon them — as the guardians of our liberty."

A memorial of the merchants of Philadelphia, dated April 6, 1785, thinks that "a recommendation from congress to the states, to vest that body with the necessary powers over the commerce of the united states, would be well received on their part."

Ibid. On the Philadelphia convention.

The editor speaks of "the convention which is to be held in Philadelphia, in May next, for the purpose of revising the federal constitution."

Ibid: A circular letter of congress to the states, dated April, 1787, contains the following: "Let it be remembered that the thirteen independent sovereign states have, by express delegation of power, formed and vested in us a general, though limited sovereignty, for the general and national purposes, specified in the confederation. In this sovereignty they cannot severally participate, (except by their delegates) nor with it have concurrent jurisdiction. They then go on to reason that the treaty power with which they are vested, enables them to bind all the states, and that a state legislature cannot alter or vary a treaty," etc.

Ibid. for June, 1787. A very able paper, signed "Harrington," says: We have now the chance to secure for America "all the benefits of monarchy, without parting with any of the privileges of a republic." He further says, "she may divide her legislature into two or three branches. . . . and may confer upon a supreme magistrate such a portion of executive power, as will enable him to exhibit a representation of majesty, such as was never seen before, for it will be the majesty of a free people. To preserve a sense of his obligation to every citizen, he may be elected annually, for seven years, or for life.

"The more we abridge the states of their sovereignty, and concentrate the supreme power in an assembly of the states (for by this name let us call our federal government) the more safety, liberty and prosperity will be enjoyed by each of the states."

Tench Coxe, Esq., in the same number, in an able and extended paper on a commercial system, speaks of the "shameless perseverance of some of the states in tender laws, after the value of the paper was gone, and its effect on the public credit." He says: "It would not be difficult, perhaps, to form a new article of confederation to prevent it in future, and a question may arise whether fellowship with any state that would refuse to submit, can be satisfactory or safe."

Ibid.: An important speech of Hamilton, in assembly of New York, Feb. 18, 1787, is copiously extracted from. It is in reference to giving congress the power over imposts and regulating commerce. He refutes the idea of danger to the integrity and sovereignty of the states, from delegating this and other powers to congress. His proposition was defeated by a large majority: such was the fear of federal power.

Extract from a circular letter of Gen. Washington to the Governors of the states, on resigning his command, June 18, 1783:

"There are four things which I humbly conceive are essential to the well-being — to the existence of the united states as an independent power —

"FIRST. AN INDISSOLUBLE UNION OF THE STATES UNDER ONE FEDERAL HEAD.

"2nd. A sacred regard for public justice.

"3d. The adoption of a proper peace establishment, and,

"4th. The prevalence of that pacific and friendly disposition among the people of the United States, which will induce them to forget their local prejudices and policies; to make these mutual concessions which are requisite to the general prosperity, and, in some instances, to sacrifice their individual advantages to the interest of the community."

"Under the first head," he declines to discuss "the principles of the Union," or "the great question," "whether it be expedient and requisite for the states to delegate a larger portion of power to congress or not:" yet he deems it his duty "to assert and insist upon the following positions; that unless the states will suffer congress to exercise those prerogatives, they are undoubtedly invested with by the constitution, everything must very rapidly tend to anarchy and confusion — that it is indispensable to the happiness of the individual states that there should be lodged somewhere a supreme power to regulate and govern the general concerns of the confederated republic, without which the union cannot be of long duration — that there must be a faithful and pointed compliance on the part of every state with the late proposals and demands of congress, or the most fatal consequences will ensue — that whatever measures have a tendency to dissolve the union, or contribute to violate, or lessen the sovereign authority, ought to be considered as hostile to the liberty and independence of America, and the authors of them treated accordingly: — and lastly that, unless we can be enabled by the concurrence of the states to participate of the fruits of the revolution, and enjoy the essential benefits of civil society under a form of government so free and uncorrupted, so happily guarded against the danger of oppression as has been devised and adopted by the articles of confederation, it will be a subject of regret that so much blood and treasure have been lavished for no purpose," etc.

Ibid., Aug., 1787.

Some men think that tyranny can be opposed only in the person of a king; but this is a mistake. The "*ardor civium prava jubentium*" is as much to be dreaded as the "*vultus instantis tyranni*." There are men who are undaunted in their opposition to a single tyrant, but are, notwithstanding, the slaves of the prejudices and passions of the people.

Ibid. New Jersey, having failed to comply with the requisition of September, 1785, for supplies, Pinckney, (Chas.) of South Carolina, from Congress, and others, were a deputation to New Jersey. Pinckney made a speech to the assembly of New Jersey, containing the following:

"When these states united, convinced of the inability of each to support a separate system, and that their protection and existence depended on their union, policy as well as prudence declared the necessity of forming one general and EFFICIENT GOVERNMENT, which, while it protected and secured the whole, left to the several states those rights of *internal sovereignty*, which it was not necessary to delegate, and which could be exercised without injury to the federal authority. In them were placed all the essential powers which constitute a nation — such as the exclusive rights of peace and war; of sending and receiving embassies; of forming treaties and alliances; and equipping and raising fleets and armies." He also speaks of obtaining loans on the faith of the United States, and of apportioning to the States their quotas of public expenses, etc.

Ibid., Sept., 1787. *Political Sketches by William Vans Murray, Esq.*

SKETCH III.—ARISTOCRACY.

"No right of governing by the representation of constituents of equal rights can be called an aristocratic right. Aristocracy proves an inequality of rights: Delegated power does not prove, as in the American democracies, an inequality of rights; for where the people appoint their own rulers, the rulers, though possessed of greater temporary delegated powers, possess no more rights exclusively that those by whom they were chosen, since the very delegation shows an equality between the candidate and constituent: it shows choice, which implies a right of rejection. However varied the modifications of the powers of government may be, and however distant they may appear to be, from the mass of the people, while the democratic constitution brings back the powers of government at stated periods to its source of sovereignty, the people, no aristocracy exists. But agreeably to the constitutions of the united states the rights of election are frequently exercised: every organ of state sprouts anew from the political body of sovereignty. Hereditary honors, hereditary rights of ruling, are excluded expressly. Jealousy hath left nothing for implication to fashion. No real feature therefore is visible, either in the constitutions or in the governments of the United States."

SKETCH IV.—EXTENT OF TERRITORY.

"Democracy is a government wherein all the members of the society are possessed of equal rights, and govern, either by themselves, or by their representatives, elected by themselves, and invested with just powers of government."

Ibid., Sept., 1787. "The constitution framed for the united states of America, by a convention of deputies from the states of New Hampshire, Massachusetts, Connecticut, etc., etc., at a session begun May 14, and ended Sept. 17, 1787."

Ibid., Sept., 1787. A "Pennsylvania farmer" says: "How may we avert the impending dangers?" "Let us adopt that federal constitution which is earnestly recommended by a convention of patriotic sages, and which while it gives energy to our government, wisely secures our liberties. . . . Having once adopted this truly federal form of government, Dean Tucker and all the divines of England may prophecy our downfall if they will; we shall not regard them."

Ibid., Sept., 1787. *Letters on the federal government*, [written after the federal instrument was promulgated — this number of the American Museum being published some time after September.] By Tench Coxe, Esq.

When the separation between the two countries was completed by the Declaration of Independence, "new governments were necessarily established"—"republican"—"many of the state constitutions are truly excellent." "Our misfortunes have been that, in the first instance we adopted no national government at all, but were kept together by common danger only; and that in the confusions of a civil war, we framed a federal constitution — now universally admitted to be inadequate to the preservation of liberty, property and the Union. The question is not, then, how far our state constitutions are good or otherwise — the object of our wishes is to amend and supply the evident and allowed errors and defects of the federal government."

He continues that, in England the king may be an idiot, a tyrant: he cannot

be removed: he can do no wrong. "In America, as the President is to be one of the people at the end of his short term, so will he and his fellow citizens remember that he was originally one of the people, and that he is created by their breath. . . . Whatever of dignity or authority he possesses is a delegated part of their [the people's] majesty and their political importance, transiently vested in him by the people themselves, for their own happiness."

"As our President bears no resemblance to a king, so we shall see the senate have no similitude to nobles. They represent states."

"House of Representatives. Each member of this truly popular assembly will be chosen by about 6000 electors, — poor as well as rich. . . . No state shall have less than one member." If hereafter the ratio of representatives should exceed the inhabitants of a state "such state would without this wholesome provision lose its voice in the house of representatives — a circumstance which the constitution renders impossible."

Ibid., Oct., 1787.

In an address by the seceding members of the assembly of Pennsylvania — 16 in number — the following objections to the new federal plan are urged for the people of Pennsylvania to consider.

Expense of it in addition to that of state government:

Whether, in case your state government should be annihilated — which will probably be the case, or dwindle to a mere corporation — the continental government will be competent to attend to your local concerns.

Objection to the power of levying and collecting taxes:

Whether the liberty of the press is a blessing or curse, and is worth a declaration for its preservation:

Whether in the plan of government there should not be a bill of rights prefixed or inserted:

Provision against standing army in time of peace is insisted on.

Whether trial by jury in civil cases ought to be abolished:

Whether the judiciary of the United States is not so constructed as to absorb and destroy the judiciaries of the several states:

Objection to continental courts for trials between citizens of different states, as unnecessary: also to appellate jurisdiction, as to fact as well as law:

"The confederation no doubt is defective, and requires amendment and revision; and had the convention extended their plan to the enabling the united states to regulate commerce, equalize the imposts, collect it throughout the united states, and have the entire jurisdiction over maritime affairs — leaving the exercise of internal taxation to the separate states — we apprehend there would be no objection to the plan of government."

In a sharp and able reply, signed "Federal Constitution" is the following:

"The objections to the federal government are weak, false and absurd. The neglect of the convention to mention the liberty of the press arose from a respect to the state constitutions, in each of which this palladium of liberty is secured, and which is guaranteed to them as an essential part of their republican forms of government. But supposing this had not been done, the liberty of the press would have been an inherent and political right as long as nothing was said against it. The convention has said nothing to secure the privilege of eating and drinking: and yet, no man supposes that right of nature to be endangered by their silence about it."

Another most powerful article — signed "One of the People" — says: "It is affirmed [in said address] that the deputies from this state had not power to recommend to the people under their appointment, a new constitution. The deputies from this state were so empowered." They had power "to devise, discuss and report such alterations and further provisions as may

be necessary to render the federal government fully adequate to the exigencies of the union; . . . alterations in governments are always made by the people.

"It is said that this constitution will annihilate the state government. On what section of the constitution do these men ground their assertion? It breathes nothing like it. It interferes not with the internal government of any state. It supports and adds a dignity to every government in the united states."

The writer then comments on the objection that congress can levy taxes: "This is a power without which no government can exist. . . . It is shameful to say that this tax will be collected by soldiers. The power is not given to a foreign prince, but to a congress chosen by the people," [and of course, deriving all its power from them].

"The freedom of the press and trials by jury are not infringed on. The constitution is silent, and with propriety too, on these and every other subject relative to the internal government of the states. These are secured by the different state constitutions. I repeat again, that, the federal constitution does not interfere with these matters. Their power is defined and limited by the 8th section of the first article of the constitution.

"It is essentially necessary that the judiciary of the United States should have an appellate jurisdiction, both in law and fact, in cases of dispute between a state and citizen of another state, and between citizens of different states." [Never yet have I met with a word showing that a transfer of citizenship from the state to the united states, was intended or even thought of.]

In the same number "Impartial" says: "We need be under no apprehensions of encroachments upon our liberties from congress, because the principal branch of that august body will always be chosen by free and independent electors. . . . The interest of the representative will correspond with that of his constituents. Every measure that is prejudicial to the people, will be equally so to those whom they appoint to govern them — they cannot betray their electors without injuring themselves: their power, their official existence depends upon the people, hence, instead of adopting measures oppressive to the people, the only danger to be apprehended, will arise from their being too cautious of giving offence, and being too remiss in the necessary operations of government."

Next comes substance of Hon. James Wilson's speech of Oct. 6, 1787, professedly "to answer the objections which have been raised" to the new federal plan, which "the impressions of four months' constant attention to the subject" enables him to do.

As to the want of a bill of rights, he says: "It would have been superfluous and absurd to have stipulated with a federal body of our own creation — that we should enjoy those privileges of which we are not divested either by the intention or the act that has brought that body into existence." [The pith of the speech is heretofore quoted. It was copied everywhere, and shows the understanding of that day, as much as the articles in the Federalist did.]

In the same number "Curtius," under date New York, Sept. 27, 1787, speaks of the convention as "an assemblage of characters most of them illustrious for their integrity, patriotism and abilities, representing many sovereign states, forming a system of government for the whole," etc.

The same number contains Letter IV. of Tench Coxe, "on the federal government." He says: "In considering the powers" of the President, Senate, and House of Representatives, "we have seen a part of the wholesome precautions which are contained in the new system."

"The united states guarantee to every state in the union a separate republican form of government.

"From thence it follows that any man or any body of men, however rich and powerful, who shall make an alteration in the form of government of any state whereby the powers thereof shall be attempted to be taken out of the hands of the people at large, will stand guilty of high treason; or should a foreign power seduce or overawe the people of any state, so as to cause them to vest in the families of any ambitious citizens or foreigners, the powers of hereditary governors, whether as kings or nobles: that such investment of power would be void in itself, and every person attempting to execute them would also be guilty of treason.

"Thep eople will remain, under the proposed constitution, the fountain of power and public honor. The President, the Senate, and the House of Representatives will be the channels through which the stream will flow: but it will flow from the people, and from them only. Every office, religious, civil and military, will be either their immediate gift, or it will come from them through the hands of their servants. And this, as observed before, will be guaranteed to them under the state constitutions, which they respectively approve, for they *cannot* be royal forms; *cannot* be aristocratical, but *must* be republican."

Speaking of the prohibition of *ex post facto* laws, he remarks: "If a time of public contention shall hereafter arrive, the firm and ardent friends of liberty may know the length to which they can push their noble opposition on the foundation of the laws. Should their country's cause impel them further, they will be acquainted with the hazard, and using those arms which providence has put into their hands, will make a solemn appeal to the power above." [He knew the ever-recurring necessity of opposing, and haply fighting against human greed and wrong.]

"Henceforth the people of the earth will consider this position as the only rock on which they can found the temple of liberty — that taxation and representation are inseparable. Our new constitution carries it into effect on the most enlarged and liberal scale: for a representative will be chosen by 6,000 of his fellow-citizens, a senator by half a sovereign state, a president by a whole nation.

"The old federal constitution contained many of the same things, which, from error or disingenuousness, are urged against the new one. NEITHER OF THEM HAS A BILL OF RIGHTS, NOR DOES EITHER NOTICE THE LIBERTY OF THE PRESS, because they are already provided for by the state constitutions; and, relating only to personal rights, they could not be mentioned in a contract among sovereign states."

In reference to the objection to the federal judiciary, he says, "in nineteen out of twenty suits at law, the federal courts cannot interfere." Then he speaks of the jurisdiction over "disputes between citizens of any state, about land lying out of the bounds thereof," or "when a trial is to be had between citizens of one state and citizens of another, or the government of another," the citizen can appeal to a disinterested federal court, and avoid a state court, that, perhaps, of his opponent. [Where are the citizens of a nation?]

"Besides the securities for the liberties of the people arising out of the federal government, they are guarded by their state constitutions and by the nature of things in the separate states. The governor or president of each commonwealth, the councils, senators, assemblies, judges, [here follow a long list of officials] will still be chosen within each state, without any possible interference of the federal government. The separate states will also choose all the members of the legislative and executive branches of the united states. The people at large in each state, will choose their federal representatives, and . . . the electors of president and vice-president of the union, and lastly the legislatures of the states will have the election of the senate."

He then asks if, under these circumstances, betrayal of the country can be

feared from a majority of the representatives, each chosen by 6,000 freemen, or by "a majority of the senate, each of whom will be chosen by the legislature of a free, sovereign and independent state" or by a "temporary limited executive officer [elected as above] watched by the federal representatives, by the senate, by the state legislatures, by his personal enemies in his own state, by the jealousy of the people of the rival states, and by the whole people of the Union."

Roger Sherman and Oliver Ellsworth, in letter to Governor of Connecticut, dated New London, Sept. 26, 1787, say: "The convention endeavored to provide for the energy of government on the one hand, and suitable checks on the other, to secure the rights of the particular states, and the liberties and properties of the citizens. We wish it may meet the approbation of the several states, and be a mean of securing their rights, and lengthening out their tranquillity."

From an address to the citizens of New Jersey on the new constitution, Nov. 5, 1787, by "a Jerseyman." "The power of congress to levy and collect taxes, duties, imposts and excises, has been objected to. By whom are those taxes to be laid? by the representatives of the several states in congress . . . in perfect conformity to that just maxim in free governments that taxation and representation should go hand in hand." To what purpose are these taxes to be applied? to pay the debts and provide for the common defence and general welfare of the united states.

"Although I drew my first breath in New Jersey and have continued in it during my life, firmly attached to its local interest, yet when I consider the impossibility of its existence at present as a sovereign state, without a union with the others, I wish to feel myself more a citizen of the United States than of New Jersey alone."

Ibid., Nov. 1787. The first six letters of the Federalist addressed "*to the people of the state of New York*" are published in the November and December numbers.

It is sufficient to note here that they advocate a "union of states," and oppose the idea that "three or four confederacies would be better than one," and consider the plan before them as a confederation of states. In the first number, dated New York, Oct. 30, 1787, the author sets his aim forth thus: "I propose in a series of papers to discuss the following interesting particulars — the utility of the union to your [the people of New York's] political prosperity — the insufficiency of the present confederation to preserve that union — the necessity of a government, at least equally energetic with the one proposed to the attainment of this object — the conformity of the proposed constitution to the true principles of republican government — its analogy to your own state constitution, — and lastly the additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property."

Ibid., Nov. 1787. Inhabitants of Fredericksburg, Va., instruct John Dawson and James Monroe — present form of government inefficacious — that "the safety, prosperity, and happiness of Virginia as well as the other states depend greatly" on adopting "the system recommended by the convention of states;" that the legislature should submit the same to a convention of delegates of the state, Oct. 19, 1787.

Instructions from the freeholders of Frederic County, Oct. 22, 1787:

We conceive "this system to be well calculated to secure to us our independence as a nation, and our civil rights as individuals, that without a more energetic federal government we cannot exist as a nation: we hence instruct you to vote for holding a convention as early as possible, to whose consideration the proposed constitution may be submitted."

Instructions of the inhabitants of Petersburg, Oct. 24, 1787: They say they are impressed with incompleteness of the present powers of congress, and feel the need of review and amendment of the confederation, and continue: — "we are sensible of the difficulty of forming such a plan of government as shall at once combine the diversity of interests and secure the rights of the respective states, subject to the general control of one sovereign authority, [meaning that of the associates, through their agency, over the citizens of each, so far as the delegated powers go]; we approve of the proposed plan of the federal constitution, as formed to cement the union of the states, and we recommend immediately calling a convention to consider it."

Ibid., Dec. 1787. "In a long and very able address of the minority of the Pennsylvania convention, the objections to the federal plan are fully set forth.

"The new government will not be a confederacy of states, but a consolidated government, founded on the destruction of the several governments of the states:"

They go on to object that the powers of congress under the new constitution — are complete and unlimited over the purse and the sword:

They speak of the power of taxation. No article is reserved to the state government, so that congress may monopolize every source of revenue. And congress may make all laws necessary to carry into effect the powers foregoing, etc.;

They say that this supremacy is consummated by the "supreme law" clause; that the constitution gives the federal government control of the militia; that the judicial power is all absorbing; that trial by jury is not secured in civil cases; that there is no reservation of the rights and privileges of the state governments, as in the confederation; no declaration that the states reserve their sovereignty, freedom and independence;

That the legislative power is so unlimited in its nature, and may be so comprehensive and boundless in its exercise, that it will swallow up the state governments in the grand vortex of the general empire.

Many other objections are urged, and the address concludes as follows: "In short, consolidation pervades the whole constitution, . . . the preamble begins with words, 'we the people of the united states,' which is the style of a compact between individuals entering into a state of society; and not that of a confederation of states. . . .

"Thus we have fully established the position, that the powers vested by this constitution in congress, will effect a consolidation of the states under one government, which, even the advocates of this constitution admit, could not be done without the sacrifice of all liberty."

[American Museum, January, 1788.]

Edmund Randolph, in a long letter to speaker of the House of Delegates of Virginia, stating reasons why he refused to sign the federal plan, hopes Virginia will be seconded in — 1. Getting ambiguities removed; 2. In rendering president ineligible; 3. In taking from him judicial appointments, and filling vacancies in recess; 4. In depriving him of pardoning for treason, especially before conviction; 5. In drawing line between the powers of congress, and individual states, and in defining the former so as to leave no clashing of jurisdictions, or dangerous disputes, and to prevent the one from being swallowed up by the other under cover of general words and implication; 6. In abridging power of senate in making treaties the supreme law of the land; 7. In preventing congress from determining their own salaries, and finally, 8. In limiting and defining the judicial power.

He clings to the union as the rock of our salvation.

Meeting of inhabitants of Chowan County, N. C.

"This state can have no prospect either of security or honor, but by a firm and indissoluble union with the other states in the confederation. We own with admiration and gratitude a system formed by the unanimous concurrence of twelve states, which attains the great object of a united government 'to establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity.'"

They call for an early convention "to deliberate on the new constitution proposed."

The Grand Jury of Edenton, N. C., Nov. 12, 1787, express themselves as "deeply sensible of the necessity of a firm and lasting union among the American states, to ensure the common safety and liberty of all. . . . We admire, in the new constitution, a proper jealousy of liberty mixed with a due regard to the necessity of a strong authoritative government. Such a one is as requisite for a confederated, as for a single government."

They "earnestly wish" for a convention which, they say, can adopt or reject.

["A strong authoritative government" was adopted. It had the power to execute its decrees — power of coercion — on citizens, not on states.]

Letter of Gen. Washington to a friend in Fredericksburg, Va.

"No alternative [in my opinion] between the adoption of it, and anarchy. If one state, or a minority of them, should suppose that they can dictate a constitution to the Union, they will find themselves deceived. . . . It or disunion is before us to choose from."

In a political society, at Richmond, Va., the federal constitution was discussed — the principal opponent, P. Henry, the leading advocate, Nicholas: after three evenings, it prevailed by 128 yeas to 15 nays. "It is expected there will be the same majority in the state convention."

Chancellor R. R. Livingston, in oration July 4, 1787, before the society of *The Cincinnati*, New York, said, "our constitution being purely democratic, the people are sovereign and absolute. The faults of absolute governments are to be charged to the sovereign — in ours they must be traced back to the people."

Ibid., Feb. 1788. Address to the minority of the convention of Pennsylvania, by "A Freeman." [Tench Coxe.]

"The consolidation of the united states into one government by the operation of the proposed constitution in contradistinction from a confederacy, appears to you to be the consequence of the system, and the intention of the framers. This is the point of difference I now treat of."

He admits that if the parts they have particularized were as represented, "the state sovereignties would indeed be finally annihilated." "Appearances," "have misled you." "I shall endeavor to exhibit clear and permanent marks and lines of separate sovereignty, which must ever distinguish and circumscribe each of the several states, and prevent their annihilations by the federal government, or any of its operations."

He speaks of "the crown having been merely a centre of union; the act of independence dissolved the political ties which had formerly existed among the states."

He then says "a confederacy of states was the mode of connection, which was wisely desired and actually adopted;" but he says there were appearances of consolidation, which he instances, and says, "have deceived said minority — they existing in the new as they did in the old confederacy."

"The matter will be better understood by proceeding to those points which

show that, as under the old, so under the new federal constitution, the thirteen united states were not intended to be, and really are not consolidated in such a manner as to absorb or destroy the sovereignties of the several states. In order to a perfect understanding of each other, it may be proper to observe here, that, by your term consolidation, I understand you mean the final annihilation of separate state government, or sovereignty, by the nature and operations of the proposed constitution.

"Among the proofs you adduce of such consolidation being the intention of the late convention, is the expression 'we the people.' Though this is a mere form of words, it will be well to see what expressions are found in the constitution in opposition to this, and indicative of the intentions of the convention, before we consider those things, which, as I conceive, secure the states from a possibility of losing their respective sovereignties.

"First, then, though the convention propose that it should be the act of the people, yet it is to be done in their capacities as citizens of the several members of our confederacy — who are declared to be the people of 'the united states' — to which idea the expression is strictly confined, and the general term of America, which is constantly used in speaking of us as a nation, is carefully omitted. A pointed view was evidently had to our existing union [of course, for the phrase 'a more perfect union' is used]. But we must see at once that the great reason of 'the people' being mentioned was, that alterations of several constitutions were to be effected, which the convention well knew, could be done by no authority but that of the people, either determining themselves in their several states, or delegating adequate powers to their state conventions. Had the federal convention meant to exclude the idea of union — that is of several and separate sovereignties joining in a confederacy — they would have said 'we the people of America:' for union necessarily involves the idea of competent states, which complete consolidation excludes. But the severalty of the states is frequently recognized in the most distinct manner, in the course of the constitution." He then gives instances.

Let us proceed to evidences against consolidation, of more force than the mere form of words.

It will be found on a careful examination, that many things which are indispensably necessary to the *existence* and good order of society, cannot be performed by the federal government, but will require the agency and powers of the state legislatures or sovereignties, with their various appurtenances or appendages,

"1st. Congress, under all the powers of the constitution, can neither train the militia, nor appoint the officers thereof.

"2d. They cannot fix the qualifications of electors, etc.

"3d. In case of vacancy in the senate, or house of representatives, they cannot issue a writ for a new election, etc.

"4th. They cannot appoint a judge, constitute a court, or in any other way interfere in determining offences against the criminal law of the states. Nor can they interfere in civil causes.

"5th. They cannot elect a president, vice-president, a senator, or a federal representative, without all of which their own government [the whole federal concern] must remain suspended and universal anarchy must ensue [anarchy or lack of government only so far as federal government is concerned].

"6th. They cannot determine the place of choosing senators, because that would be derogatory to the sovereignty of the state legislatures, who are to elect them.

"7th. They cannot enact laws for the inspection of the produce of the country — an important matter to the commerce of the several states, etc.

"8th. They cannot appoint or commission any state officer — executive, legislative and judicial.

"9th. They cannot interfere with the opening of rivers and canals; the making or regulation of roads, except post-roads; building bridges; erecting ferries; the establishment of state seminaries of learning; libraries; literary, religious, trading or manufacturing societies; erecting or regulating the police of cities, towns or boroughs; creating new state offices; building light-houses, public wharves, county jails, markets, or other public buildings; making sale of state lands and other state property, or receiving their revenues; executing the state laws; altering the criminal laws; nor can they do any other matter or thing appertaining to the internal affairs of any state, whether legislative, executive, or judicial, civil or ecclesiastical.

"10th. They cannot interfere with, alter, or amend the constitution of any state."

In the number for March 1788, "A Freeman" [Tench Coxe] continues:

"I pointed out a variety of instances, in which the agency and powers of the state governments are absolutely necessary to the existence of civil society, and to the execution of the federal constitution itself. I particularized necessary matters to be done, which cannot be done by the general government." Hence — he continues — we find that not only the state powers must exist, but that they are indispensable.

"Having seen what congress cannot do, let us see what the state governments must or may do.

"First then, each state can appoint every officer of its own militia, and can train the same [i. e. the militia], by which it will be sure of a powerful military support, attached to, and even part of itself, wherein no citizen of any other state can be even a private sentinel, much less have influence or command.

"2d. Every regulation relating to religion, or the property of religious bodies, must be made by the state governments, since no powers affecting those points are contained in the constitution.

"3d. The state legislatures and constitutions must determine the qualifications of the electors for both branches of the federal government — and here let us remember to adhere firmly, within our respective commonwealths, to genuine republican principles. Wisdom, on this point, which [point] lies entirely in our hands, will pervade the whole system, and will be a never-failing antidote to aristocracy, oligarchy and monarchy.

"4th. [Regulating descents prohibiting entails — equal division of intestate successions, are thought necessary, and the whole subject is said to belong to states.] This power, with that mentioned under the last head, if exercised with wisdom and virtue, will preserve the freedom of the states, beyond any other means.

"5th. The elections of the president, vice-president, senators and representatives are exclusively in the hands of the states — even as to filling vacancies. The smallest interference of congress is not permitted, either in prescribing the qualifications of electors, or in determining what persons may or may not be elected [then are mentioned some regulations, which congress is authorized by the states to make].

"6th. The states will elect, appoint and commission all their own officers, without any possible interference of the federal government. [Senators, representatives and president are virtually commissioned by the states, a point too seldom mentioned or thought of: — First, they must be citizens of states; second, representatives are elected by, and hold certificates of election from states, with the states' broad seals on them. So with senators; and the president finds his validity in state records of state action; and all federal officers must go back to states in tracing up to the source, their official being.]

"7th. The states can alter and amend their several constitutions, provided they do not make them aristocratical, oligarchic, or monarchical: for the federal constitution restrains them from any alterations that are not really republican. That is, the sovereignty of the people is never to be diminished or destroyed.

"8th. The states have the power to erect corporations for literary, religious, commercial, or other purposes, which the federal government cannot prevent.

"9th. Every state can always give its dissent to federal bills, as each has a vote in the senate and house of representatives, secured by the Constitution. Hence it appears not only that the state governments are intended to remain in force within their respective jurisdictions, but they are always to be known to, and have their voices as states, in the federal councils.

"10th. The states are not only to elect all their own officers, but they have a check by their delegates to the senate, on the appointment of all federal officers.

"11th. The states are to hold separate territorial rights, and the domestic jurisdiction thereof, exclusively of any interference of the federal government.

"12th. The states will regulate and administer the criminal law. [The criminal jurisdiction of the federal government is not very clearly set forth. Of course, it must be, in cases excepted out of the jurisdiction of the states, by the states themselves, must come from the states, and must be within the grants of the federal constitution.]

"13th. The states are to determine all the innumerable disputes about property lying within their respective territories between their own citizens — such as titles, boundaries, debts, contracts, etc., etc.; none of which can ever be cognizable by the federal government.

"14th. The several states can, [here follow a long list of things and subjects 'of the utmost importance to the happiness of their respective citizens,' which the states can do.]

"In addition to this enumeration of the powers and duties of the state governments, we shall find many other instances under the constitution, which require, or imply the existence, or continuance, of the sovereignty or severalty of the states."

"The following are some of them:

"All process against criminals, and many other law proceedings, will be brought by, and run, in the name of that commonwealth in which the offence or event shall have taken place.

"The senate will be representatives of the several state sovereignties.

"Every state must send its own citizens to the senate and to the house of representatives. No man can go thither but from the state of which he is a complete citizen, and to which, if they choose, he shall be sworn to be faithful.

"No state shall on any pretence be without an equal voice in the senate, and a vote in the house of representatives.

"Any state may repel invasions, or commence a war under emergent circumstances, without waiting for the consent of congress.

"The electors of the president and vice-president must not nominate more than one person of the state to which they respectively belong, so careful is the federal constitution to preserve the rights of the states.

"In case of an equality of votes in the election of president and vice-president, a casting voice is given to the states, from a due attention to their sovereignty in appointing the ostensible head of the federal government."

He next speaks of "written communications from the governors of states, of the provisions for adjusting differences between states, and between one state and the citizens of another — the admission of new states:" as to this, he says: "As all the territory of each state is already in the union, any district must

stand on different ground, when erected into a state from what it did when it was counties, or a part of an already existing member of the confederacy." He further says two states may not become one, without assent of congress "showing that the convention held the severalty of states necessary. This is directly opposite to your idea that consolidation was intended." "Each state and the federal justiciary are to give faith and credit to the records and proceedings of every other state." "Each state has, in the federal constitution, a guaranty of a separate republican form of government." "Two-thirds of the states in the proposed confederacy can call a convention; not two-thirds of the people." "Three-fourths of the states can alter the constitution, not three-fourths of the people."

"From this examination of the proposed constitution for the united states, I trust it will appear that, though there are some parts of it, which, taken separately, look a little like consolidation, yet there are very many others of a nature, which proves that no such thing was intended, and that it cannot ever take place.

"It is but since the middle of the present century, that the principles and practice of free governments have been well understood. . . . The principles on which *free sovereignties* ought to confederate, is quite a new question, and a new case. . . . One circumstance has exceedingly obscured the subject and hid the truth from the eyes of many of us. Most of the states being in possession of free governments, some have looked for the same forms in a confederating instrument which they have justly esteemed in their several social compacts." He then concludes by referring to the distinction between the original social compact and the constitution of the league and federal government.

In the American Museum of April, 1788, is No. III. of the same address to the minority of the Pennsylvania convention, by Tench Coxe.

He says he has heretofore shown "from the proposed frame of government, and the state constitutions," "that there is no ground to apprehend a consolidation of the states, which shall join the depending confederacy into one government."

He believes, with Mr. Wilson, that "despotism would be the consequence of a single national constitution, in which all the objects of society and government were so completely provided for, as to place the several states in the union on the footing of counties of the empire. But permit me to ask you, gentlemen, will such be the condition of the states? Where is the county that can independently train its own militia; appoint its civil and militia officers; establish a peculiar system of penal laws; issue criminal process in its own name; erect corporations; impose direct taxes, excises and duties; hold lands in its own right; commence war on any emergency; regulate descents; prescribe the qualifications of electors; alter its constitution or the principles of its government; divide itself into separate and independent parts; join itself to another state; issue writs for elections and regulate the same; enact inspection laws; erect courts; appoint judges; commission all its officers; create new officers; sell and give away its lands; erect fortifications; and in short where is the county in the union, or in the world, that can exercise in any instance independent legislative, executive, and judicial powers.

"The construction of the senate affords an absolute certainty that the states will not lose their present share of separate powers. No state is to lose its voice therein without its own consent. Governor Randolph justly observes, that the force of the constitution of any state can only be lessened by the absolute grant of its own citizens. Whatever therefore is now possessed will remain, unless transferred by new grants."

He then mentions the control states will be likely to have over their senators, and thinks they may be too partial to the state, to the injury of national objects.

And, continues he, so independent will the state governments be, that their laws on some subjects may be severer than those of the union: "Treason against the united states, for instance, cannot be attended with confiscation and corruption of blood; but by the existing laws of all the states, the unoffending families of attainted persons, stripped of all hereditary rights, and condemned to the bitter portion of extreme poverty, are left without their friend and parent to meet the trials of the world alone, an awful monument of the sovereign and avenging power of their native state. Let the representative or senator who may meditate the annihilation of the government of his state, duly consider this before it be too late."

"The lordship of the soil is one of the most valuable and powerful appendages of sovereignty: this remains in full perfection with every state. From them must grants flow. . . . To them also as original and rightful proprietaries and lords of the soil, will the estates of extinct families revert."

"Independent revenues and resources are indubitable proofs of sovereignty." [The power to collect federal revenues is derived from the states: the federal functionaries levy taxes, etc., on subjects of taxation within the states, solely by virtue of the states' sovereign authority.]

"Impeachment in the several states will afford them opportunities of exerting the most dignified and awful powers of sovereignty. The people of every state, by their constitutional representatives, may impeach the public officer, however great or daring, who shall presume to violate their exclusive rights, or offend against the peace and dignity of their commonwealth; and may punish him, on conviction, by fine, imprisonment or death, without any possible interference of congress.

"But, gentlemen, the subject is inexhaustible. Every section in the constitution, as we peruse it, affords new ideas opposed to consolidation. . . . Thinking, as you did, consolidation was intended, and would take place, . . . you would have been criminal in assenting to the plan proposed."

Ibid., 1788, contains an address to the freemen of South Carolina on the federal constitution, by Dr. Ramsay:

"You have at this time, a new federal constitution proposed for your consideration. . . .

"First. It is the manifest interest of these states to be united. [The weakness of South Carolina, and the need of protection, are the grounds of his appealing to strengthen the federal government.]

". . . Second. If the thirteen states are to be united in reality, as well as in name, the obvious principle of the union will be that the congress, or general government, should have power to regulate all general concerns. . . . When thirteen persons constitute a family, each should forego everything that is injurious to the other twelve. . . . When several states combine in one government, the same principles must be observed."

Ibid., 1788, May No. Letter from Dr. Rush to Dr. Ramsay, speaks of "the auspicious event of the ratification of the federal government by six of the united states."

He says the idea of a bill of rights for the federal constitution has been reasoned and ridiculed out of the said states. He speaks of two "securities for liberty" "in the proposed constitution of the united states," — "representation and checks." "Without them a volume of rights would avail nothing; and with them a declaration of rights is absurd and unnecessary: for the people where their liberties are committed to an equal representation, and to a compound legislature, such as we observe in the new government, will always be the sovereigns of their rulers, and hold all their rights in their own hands. To hold them at the mercy of their servants is disgraceful to the dignity of free-

men. Men who call for a bill of rights have not recovered from the habits they acquired under the monarchical government of Great Britain.

"I have the same opinion with the anti-federalists, of the danger of trusting arbitrary power to any single body of men: but no such power will be committed to our rulers. Neither the house of representatives nor the senate, nor the president, can perform a single legislative act by themselves."

Ibid., 1788, May number. Address of Tench Coxe to the members of the convention of Virginia. He speaks of the prospective "erection of Kentucky into an independent state, and her becoming another member of the new confederacy;" and of New Jersey and Delaware as "the least commercial members of the confederacy."

Gov. Hancock to the Legislature of Massachusetts, Feb. 27, 1788, after stating the ratification of the federal constitution by the convention of Massachusetts, he says "the objects of the proposed constitution are defence against external enemies and the promotion of tranquillity and happiness among the states. . . . The amendments proposed, . . . must meet the wishes of the states." He expects an exhibition "on the great theatre of the world, of those social, public, and private virtues, which give more dignity to a people possessing their own sovereignty, than crowns and diadems afford to sovereign princes."

Ibid., for June, 1788. Continuation of Tench Coxe's address to the Virginia convention:

"Should Virginia decline the new confederacy," Accomac and Northampton might wish to join Maryland.

If you "wish to see manufactures established in Virginia, . . . you should be a part of the new confederacy:" and several times the phrase "new confederacy" is used in the address.

"Should nine or ten states adopt the constitution, how miserable will be the condition of those states who decline it."

Arguing for the confederation because of its making the states capable of defending themselves against Spain on the south, and England on the north, he says: "We have nothing to fear from either of those quarters, provided we are united. In this respect the united states, under the new constitution, will possess all the advantages in America, which Henry IV. hoped to produce by a general league in Europe; with this great difference in our favor, that the road to ours is through well-conducted and free councils, independently held by the states concerned; and his scheme, however useful and noble the design, would necessarily have been effected by force and bloodshed."

Ibid., June, 1788. "Remarks on the proposed system of federal government," by Hon. Hugh Williamson, delegate from North Carolina to the Continental convention, made to the free men of the county of Chowan and town of Edenton, North Carolina.

On the want of security for the freedom of the press, and of a bill of rights, he says the citizens of the states have "no occasion for a second declaration of rights. . . . Their rights in the several states have long since been explained, and secured by particular declarations, which make a part of their several constitutions."

It is perfectly understood, that "under the state government, and under that of congress, every right is reserved to the individual, which he has not expressly delegated to this, or that legislature.

"The other objections that have been made are that the new plan absorbs the powers of the several states, that the national judiciary is too extensive, that a standing army is permitted, that congress is to regulate trade, and that the several states are prevented from taxing exports."

He says as to the 1st, That "little power is left to the state: Let us look at the code: nine out of ten of the laws are domestic, and must be so. Hitherto you have delegated certain powers to the congress, and other powers to the assemblies of the states. The portion that you have delegated to congress is found to have been useless, because too small." He argues for the new system, because it contains a sufficient delegation of powers, and he concludes on the point by showing that "the claim of powers" in congress endangering states, "is nothing better than the empty whistling of a name. The congress will be chosen by yourselves, as your members of assembly are. They will be creatures of your hands, and subject to your advice. Protected and cherished by the small addition of power which you shall put into their hands, you may become a great and respectable nation.

"It is complained that the powers of the national judiciary are too extensive. . . . The powers that are now to be committed to the national legislature, as they are detailed in the 8th section of the first article, have already been chiefly delegated to the congress under one form or another, except those which are contained in the first paragraph of that section, and the objects that are now to be submitted to the supreme judiciary, or to the inferior courts, are those which naturally arise from the constitutional laws of congress." He then goes on to show how necessary for justice to "the citizens of the different states," the investiture is.

. . . "The line that separates the powers of the national legislature from those of the several states is clearly drawn. The several states deserve every power that can be exercised for the particular use and comfort of the state. They do not yield a single power which is not purely of national concern; nor do they yield a single power which is not absolutely necessary to the safety and prosperity of the nation, nor one that could be employed to any effect in the hands of particular states. The powers of the judiciary naturally arise from those of the legislature."

As to the objection of keeping regular troops, he says: "It is remarkable that the same objection has not been made against the original confederation, in which the same grievance obtained without the same guards." No appropriation for the army, says he, can be made for more than two years. This with other obvious safeguards, he thinks enough to prevent danger from standing troops. He says further:

". . . It is the general opinion of my late honorable colleagues," that the state of "North Carolina" will, under "the proposed system," see "better times."

"The proposed system is now in your hands, and with it the fate of your country.

"But if our constituents shall discover faults where we could not find any, or if they shall suppose that a plan is formed for abridging their liberties, when we imagined that we had been securing both liberty and property on a more stable foundation, they will at least do us the justice to charge those errors to the head, and not to the heart." Resolutions, heretofore quoted, of the freemen of the county of Chowan, and town of Edenton, were passed after the speech.

Ibid., June, 1788. A correspondent from Charleston says: "If we wish to be a united people, the states must play into each other's hands as much as possible, and do all they can to serve each other, which will cement us together, so that we shall not be nominally, but really a united people."

"Philadelphia, June 2d. This day the convention of Virginia meets.

"The 23d ult. the convention of South Carolina agreed to ratify the new federal constitution. The votes on putting the question stood — yeas 149, nays 73 — majority 76. A motion made by Gen. Sumter, to postpone the further consideration of the constitution, was rejected on the 21st — yeas 89, nays 135."

Some amendments were recommended by the convention. The ratification was celebrated in Charleston, by a splendid procession.

"June 19th. A committee of congress have reported, and congress has agreed, that it is expedient that Kentucky be erected into an independent state."

"June 28th. The 21st instant, the federal constitution was agreed to by the convention of New Hampshire. The votes were—yeas 57, nays 46."

"June 30th. Last Wednesday the convention of Virginia ratified the federal constitution. Yeas 88, nays 78."

Ibid., for July, 1788. Extract from letter of Gen. Washington to the proprietors of the ship Federalist, which had been used in the procession at Baltimore, "to solemnize the ratification of the federal constitution by the state of Maryland:" "The unanimity of . . . the state of Maryland, . . . expressed in their recent decision on the subject of a general government, will not be without its due efficacy, etc. . . . I cannot entertain an idea that the voice of the convention of this state, which is now in session, will be dissonant from that of her nearly allied sister across the Potomac."

Same number, July 16, 1788, "Numa" proposes mode of election of representatives, and says, "when members are thus chosen by the whole state, they will consider themselves servants of the whole state." "The members of each state will be a band of brothers," and "will not be swayed by local considerations."

Same number, July, 1788, contains resolutions of congress from which the following extracts are taken:

"Whereas, application has been made to congress by the legislature of Virginia and the District of Kentucky, for the admission of said district into the federal union," and "congress" "did, on the 3d of June last, resolve that it is expedient that the said district be erected into a sovereign and independent state, and a separate member of the federal union:" since that, "it appearing that nine states have adopted the constitution of the united states, lately submitted to conventions of the people; and whereas, a new confederacy is formed among the ratifying states, and there is reason to believe that the state of Virginia, including the said district, did on the 25th of June last, become a member of the said confederacy."

They then go on to conclude that, as they are a congress under the old confederacy, and that the proceedings were had in reference to the old confederacy, both congress and the promoters of the new state, shall forbear to act until the new *régime*, and that they shall shape their future course according to that.

Ibid., July, 1788. *Memoranda.* "The new constitution was made and proposed by 12 states; ratified in Pennsylvania by delegates from 12 counties; proclaimed at Philadelphia at 12 o'clock; on the 12th day of the 12th month; in the 12th year of American independence."

Ibid., July, 1788. "New York, July 28, on Saturday evening at 9 o'clock, arrived the joyful tidings of the adoption of the new constitution at Poughkeepsie, July 25—yeas 30, nays 25, majority 5." [The truth is the majority was only 3,—30 to 27.]

"Petersburg, Va., July 24. On Monday last, the convention of North Carolina met at Hillsborough. We learn there is a considerable majority against the new government; but the supporters have great hopes, since this state has acceded to it."

Philadelphia, July 12, "interesting crisis;" "thirteen states now represented in congress." "The report of a respectable committee of that honorable body to whom were referred the ratifications of the new constitution, which have been transmitted to them by the several ratifying states, and other impor-

tant matters, engross their attention at present. . . . On the question in the united states in congress assembled, for putting the new constitution into operation, there appeared only one dissenting voice."

An elector writing from Frederick, Maryland, March 20, 1788, says, in conclusion "that all hopes of prosperity under the present confederation have subsided . . . that a new form of government is proposed by the authority of the people of twelve states in convention, and submitted to the people of each state for their separate consideration and adoption; that this constitution may be rejected, but amendments can take place previous to its adoption, only in a convention of all the states; that after its adoption two-thirds of congress, or a convention called at the request of two-thirds of the states, may propose such amendments, which shall become parts of the constitution when ratified by three-fourths of the states — and shall we not conclude that defective as it may be, it is better and safer than none? We have it in our choice to accept and make it what we want it, or reject it and commit ourselves to chance, anarchy, and all the evils attendant on political confusion; or peace, order, and prosperity are subjects of our election."

Ibid., Aug. 1788. Judge Fras. Hopkinson — author of "Hail Columbia" — writes an allegory, comparing the substitution of the new for the old federal plan to the change of an old for a new roof. "To the 5th objection he answered that, the intention was to make a firm and substantial roof by uniting the strength of the thirteen rafters; and that this was so far from annihilating the several rafters and rendering them of no use, that it was manifest from a bare inspection of the plan, that, the strength of each contributed to the strength of the whole, and that the existence of each and all were essentially necessary to the whole fabric as a roof.

". . . However the component parts of the roof might be combined, . . . the whole must necessarily rest upon and be supported by the walls" [the people].

Ibid., Aug. 1788. "We learn that the convention of North Carolina have not absolutely rejected the new constitution, but have proposed a bill of rights . . . and amendments," which are to be laid before congress and the states before North Carolina will ratify. "The new constitution was discussed clause by clause in committee of the whole convention," and "the above result was had by majority of 102 — yeas 184, nays 82. . . . Through the whole discussion on this subject, the convention showed disposition to promote the interest of the union, . . . but being previously instructed by their constituents, and perceiving objections in the new constitution, they thought themselves justified in postponing ultimate decision, . . . till it should be reconsidered by the several states, and such objections removed, as might be found necessary for the preservation of the union." [She declared 20 rights and proposed 26 amendments. Finally, when she was satisfied her rights would be safe, she ratified.]

Ibid., for Oct. 1788. Address to the independent electors of the federal government by "A Republican," Boston, July, 1788:

"The voice of eleven states, by their representatives in convention, has decided in its favor; and a majority of the most important states in the American union, are ready to risk their political happiness on the operation of this new system.

"When you adopt this instrument you have a good mean, an excellent instrument; but it is still necessary that you should attend to the use of that instrument, and watch vigilantly that it be placed in proper hands."

Ibid., same date. "Thoughts on the constitution of Maryland," etc., by James McHenry:

"One is disposed to expect happiness and tranquillity in a government

founded in actual compact, wherein the people have specified their peculiar rights and the rights of the sovereignty."

The writer says sovereignty is essential to the existence of a republic, and speaks of the general assembly as possessing sovereignty, by which he evidently means power of government as representatives of the people: for he, in the same passage, speaks of the need of "frequent elections, to afford the people an opportunity to change the trustees of the sovereignty, when of opinion that others would execute it more to their satisfaction; and this organization," he continues, "fixes the deliberative powers with the sovereignty, and the elective with the people." He says again: "how much to be preferred is the situation of a people whose compact, [the social compact] instead of a right to instruct, vests them with a right to discontinue! — a right which gives the people efficient control over the deliberative power; for what delegate or senator, desirous to be continued in the sovereignty, will venture to act contrary to the sense of his electors."

Samuel Chase, Esq., afterwards supreme judge of the united states, in an address to his constituents in Anne Arundel county, on the right of instruction says, "as one of your delegates I hold myself, . . . bound to obey your instructions in every case in which you please to give them, or to resign my seat."

Speaking of a certain subject, he says "if you have altered your opinion be pleased to inform me, and I will give up my private judgment, and endeavor to carry in execution your pleasure."

"All lawful authority originates from the people, and their power is like the light of the sun, native, original, inherent and unlimited by human authority. Power in the rulers or governors of the people, is like the reflected light of the moon — and is only borrowed, delegated, and limited by the grant of the people. . . . The two branches [of the legislature] have only a derivative and delegated power. The people create [them] and vest them with legislative authority, to be exercised agreeably to the constitution; and therefore both branches must be equally the representatives, trustees, and servants of the people, and the people are equally the constituents of both. . . . Our government is a government by representation. The people appoint representatives in the senate and house of delegates to transact the business of making laws for them, which is impracticable for them to do in person. From the nature of a government by representation, the deputies must be subject to the will of their principals, or this manifest absurdity and plain consequence must follow, that a few men would be greater than the whole community, and might act in opposition to the declared sense of all their constituents." [This is precisely what has occurred in the united states government, i. e., (to use the language of Burke) they have "changed from an immediate state of procuration and delegation to a course of acting as from original power." Demosthenes complained for the Athenians, "that the representative has now usurped the right of the people, and exercises an arbitrary power over his ancient and natural lord."]

"The right of the people to resist their rulers when they attempt to enslave them is paramount, and not derived from the form of government."

Ibid., October, 1788. Mr. Mandrillon, of Amsterdam, author of the "American Spectator," in calling attention to the letter of the convention to congress, and to the new constitution, uses the following language:

"As the association of all the states had no other object than the formation of a consolidated republic, [?] it was essential to give this union — that is to say, to the government of this federal republic — the energy and force requisite to accomplish the general design of the league, without derogating from the prerogatives which compose the sovereignty and legislative authority of each individual member of the confederacy."

Ibid. "Congress recommended the several states to pass laws to prevent the transportation of convicts from foreign countries into the united states. The assembly of Connecticut have passed such an act, Oct. 15, 1788."

Ibid. "Tribunus" of Boston, tells what he means by "a free constitution and government:" "What I mean by a free constitution, is such a form of a commonwealth as considers property [rights, individual or state?] existing independent of government, and government formed for the support and protection of it, and that protection flowing from 'standing promulgated laws' carried into execution by 'known and authorized judges,' and equally and impartially applying to each member of the state. I mean, in fine, a form of government established by the people, which secures to them their property as their own against rapine, and under no control of a legislature, and is a law to the legislative authority itself."

Ibid., Oct., 1788. The citizens of Tarborough addressed Samuel Johnston, Governor of North Carolina, and President of the convention of North Carolina, which postponed ratification, approving the zeal he displayed in trying "to connect the state of North Carolina to the general union," and reprobating the opposition.

The governor replies, Sept. 3, 1788, speaking of the endeavors of the minority "to avoid a separation" of the state "from the counsels of the united states," setting forth that in his opinion "the citizens of the state have been at no time averse to a federal government, but that they evidently preferred amendments before accession;" and expressing the "hope" that "effectual means" will be used "as soon as possible to replace this state in the union," where alone she "can be safe and respectable."

Ibid., Oct., 1788. Thomas Mifflin, President of Pennsylvania, addressing the assembly of that state, says:

"The principal difficulties which obstructed the adoption of the federal constitution have been happily overcome; the prejudice and suspicions that were awakened by the appearance of that system, have been gradually lulled, and we can no longer doubt that all those states which have been successfully allied to obtain the independence of America, will again be united in that best means of giving strength, dignity, and stability of national character."

Ibid., Dec., 1788. Among the select poetry is an ode written for the occasion of the federal procession, New York, July, 1788, which contains the following: [all these things show how the political arrangement that was then being consummated, was understood both by public men, and the public they addressed.]

VERSE IV.

"Ten sovereign states in friendship's league combined,
Blest with a government whose arms embrace
The dearest interests of the human race.
. . . . . .
Behold the admired procession move along
Our sister states, the happy ten, to greet."

VERSE VII.

. . . . . .
Discord shall cease and perfect union reign,
And all confess that sweetly-powerful chain —
The federal system — which at once unites
The thirteen states and all the people's rights.
Oh may those rights be sacred to the end,
And to our late posterity descend;
That beauteous structure flourish and expand,
And ceaseless blessings crown this happy land."

American Museum for January, 1789, Nicholas Collin, D. D. & M. A. P. S., writes remarks on the proposed amendments to the federal constitution.

He speaks of "thirteen sister republics debating . . . on the form of a common government," and says some of the proposed amendments "are repugnant to an effectual confederacy." He says "the federal government is formed by the people, and for the good of the people; its first object is therefore to secure the grand interests of the individuals who compose the states; the second, to preserve the political powers of these states, is but of an inferior quality and subordinate to the first. It is of the greatest moment to every citizen of America to be protected in his life, property, liberty, family and all the dear interests of human nature." [The states are especially important on this account, and the federal system was formed by them to enable them to do so. They were to protect the citizen, and the federal concern was to protect them in so doing.]

He speaks of certain things that ought to "be left to the discretion of the united states in congress assembled."

Ibid., March, 1789. The legislature of Virginia, addressing congress on the subject of the convention for amendments, say: "The good people of this commonwealth in convention assembled, having ratified the constitution submitted to their consideration. . . . At the same time that from motives of affection to our sister states, the convention yielded their assent to the ratification, they gave proofs that they dreaded its operation under the present form." They then mention the required amendments. [All the necessary ones were afterwards adopted.]

Resolution of the assembly of Pennsylvania, on circular letter to the states, from Virginia legislature upon amendments. The assembly say they regret "to dissent from the opinion of that assembly upon any point of common concern to the two states, as members of the union."

News: Baltimore, Feb. 13. "The important day in the annals of America is past, which conferred on a single citizen those sovereign powers that must be placed in one person, to render a nation happy in peace, and prosperous in war."

Oration, July 4, 1788, by Hon. James M. Varnum, one of the judges of the North Western Territory, at Marietta, Ohio:

After speaking of the articles of confederation as defective, he says: "And but for those friendships which have formed and preserved a union sacred to honor, patriotism, and virtue; and but for that superior wisdom which formed the new plan of a federal government, now rapid in its progress to adoption, the confederation itself, before this day, would have been dissolved."

On July 28, 1788, C. W. Hartley (aged 13,) said at York, Pennsylvania, in an oration: "Notwithstanding all impediments, the constitution has been adopted by ten of the states, and it is expected that the other three will soon follow the wise example."

Ibid., April, 1789. Fourteen members of the Pennsylvania legislature addressing their constituents, and other freemen of Pennsylvania, in opposition to calling a convention to reform the constitution of Pennsylvania, in so far as it is contradictory to the federal constitution, say: "Because a convention of this state with equal authority to that of the convention who framed your constitution, has already adopted the federal constitution, and thereby repealed every article of your plan of government which was contradictory to it."

They then mention the adoption of the supreme law clause as having this effect and proceed as follows: "How idle and fallacious, then, is the argument for a change in your plan of government to make it conformable to that of the united states, when these very men know that you have already, by the highest authority in the state, made the constitution and the laws of congress paramount to all your laws, and your constitution, into the bargain."

They further urge waiting to see if the constitution will not be amended. [I quote the above to show what was considered the authority of a convention, and that it was the same body organized and authorized by the state, that adopted the two constitutions, state and federal.]

Ibid., for July, 1789. Governor and council of North Carolina addressed congratulations to Gen. Washington after he had become president, May 10, 1789: "Though this state be not yet a member of the union under the new form of government, we look forward with pleasing hope to soon becoming such, and in the mean time consider ourselves bound in a common interest and affection with the other states, waiting only for such alterations as will remove the apprehensions of many of the good citizens of this state, for those liberties for which they have fought and suffered in common with others." May 10, 1789.

Signed. SAMUEL JOHNSTON, *Governor.*
JAMES IREDELL, *Prest. of Council.*

Gen. Washington replies: June 19, 1789, that he "considers the letter . . . but as indicative of the good dispositions of the citizens of your state towards their sister states, and of the probability of their speedily acceding to the new general government."

He joins them in the hope that the "union will be as perfect, and more safe, than it has ever been."

He winds up by saying he is "impressed with the idea that the citizens of your state are sincerely attached to the interest, the prosperity, and the glory of America;" and that he implores Divine guidance in "the counsels which are shortly to be taken by these delegates on a subject of the most momentous consequence: I mean the political relation, which is to subsist hereafter, between the state of North Carolina and the states now in union, under the new general government."

No. 4.

THE UNION OF STATES.

Extracts from Noah Webster's American Magazine, and from the Columbian and Massachusetts Magazines, 1787–1789.

AMERICAN MAGAZINE, 1787–88.

Published in New York by Noah Webster. The numbers are all bound in one volume.

THESE extracts are of vast importance, because they are the precise principles governing Noah Webster's political views throughout his long and illustrious career; and they afford much aid to enable the descendants of the great statesman and philologist in their pious duty of publishing a genuine edition of the great work of their ancestor. The italics are in the text.

[Extract from the number for January, 1788.]

"The whole body of people in society is the sovereign power or state; which is called the body-politic. Every man forms a part of this state, and so

has a share in the sovereignty; at the same time, as an individual, he is a subject of the state. When a society is large, the whole state cannot meet together for the purpose of making laws; the people therefore appoint deputies or representatives — to act for them. When these agents are chosen, and met together, they represent the whole state, and act as the sovereign power. . . . The people in free governments make their own laws by agents or representatives, and appoint the executive officers. An executive officer is armed with the authority of the whole state. . . . He cannot do wrong unless he goes beyond the bound of the laws."

Ibid. "One of the principal objections to the new federal constitution is, that it contains no bill of rights. . . . A bill of rights against the encroachment of kings and barons, or against any power independent of the people, is perfectly intelligible. But a bill of rights against the encroachments of an elective legislature, that is, against our *own* encroachments on *ourselves*, is a curiosity in government. . . . In our governments there is no power of legislation independent of the people; no power that has an interest detached from that of the public. Consequently, there is no power existing against which it is necessary to guard. While our legislatures, therefore, remain elective, and the rulers have the same interest in the laws that the subjects have, the rights of the people will be perfectly secure, without any declaration in their favor. But this is not the principal point. I undertake to prove that a standing *bill of rights* is *absurd*, because no constitutions in a free government can be unalterable. The present generation have indeed a right to declare what *they* deem a *privilege;* but they have no right to say what the next generation shall deem a privilege. A state is a supreme corporation that never dies. Its powers, when it acts for itself, are at all times equally extensive; and it has the same rights to *repeal* a law this year as it had to make it the last. If, therefore, our posterity are bound by our constitutions, and can neither amend nor annul them, they are, to all intents and purposes, our slaves. . . . We have no right to say that our posterity shall not be judges of their own circumstances. The very attempt to make *perpetual* constitutions, is the assumption of a right to control the opinions of future generations, and to legislate for those over whom we have as little authority as we have over a nation in Asia. . . . There are, perhaps, many laws and regulations, which, from their consonance to the eternal principles of justice, will always be good and conformable to the sense of a nation. But most institutions in society, by reason of an increasing change of circumstances, either become altogether improper, or require amendments; and every nation has at all times the right of judging of its circumstances, and determining on the propriety of changing its laws."

Ibid. Reviewing the Federalist, he says: Concerning the House of Representatives, the writer sets forth that "each state regulates the qualifications of its own electors."

As to senators, "the appointment is to be made by the state legislatures. . . . The equality of representation, which was the result of compromise and mutual concessions, establishes the equal sovereignty of each state."

"The executive is clothed with no more power than is necessary to a just administration of the laws; nor more than is necessary to secure the rights of the citizens and states."

As to the judiciary: "Its powers must necessarily extend to all legal questions that arise under the constitution and laws of the united states."

The reviewer quotes passages (in the Federalist) directed against the present attempt to obtain amendments as follows: "It will require the concurrence of thirteen states," but, the instrument once ratified, nine can do it. "Every constitution for the united states," says the writer [Hamilton], "must inevita-

bly consist of a great variety of particulars, in which thirteen independent states are to be accommodated in their interests, or opinions of interest. . . . Hence, the necessity of moulding and arranging all the particulars, which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be, in a ratio to the number of particulars, and the number of parties."

Ibid., for February. "The representative of a people is, as to his powers, in the situation of an attorney, whose letters commission him to do everything which his constituent could do, were he on the spot." [i. e. if his powers were general; if specific, he would be confined thereto.]

"The individuals who compose a political society or state have a sovereign right to establish what form of government they please in their own territory."

In review of the Federalist, Montesquieu's idea, that republican government is only fit for small territory, is combated: "By the modern practice of representation, a very large extent of country may be governed by the republican form; and even Montesquieu himself admits that a confederation of republics may be so formed as to unite the happiness of free states with the vigor of monarchies. The new constitution may be an improvement on the Lycian league, which that writer proposes as a model."

Ibid. The editor, Noah Webster, says, in reply to objections: That the federal constitution "will *preserve* our equal republican forms of government, nay that it is their only firm support, and the guarantee of their existence. And, if they consent to the additions and alterations proposed by the Massachusetts convention, it is not so much because they think the constitution will be the better for them, but, because they think these additions will reconcile the opposition, and unite all parties."

Ibid., June, "American intelligence." "In convention of the people of South Carolina, by their representatives held," etc.: —

"The convention having maturely considered the constitution, or form of government, reported . . . by the convention, etc., . . . do, in the name, and behalf of the people of this state, hereby assent to, and ratify, the said constitution. . . . Done in convention, the 23d of May," etc.

News is given of the ratification by New Hampshire — yeas 57, nays 46, majority 11. "On the arrival of this important intelligence — *the ratification by the* SIXTH STATE, the citizens of New York testified their joy by the ringing of bells and firing of cannon."

It is announced that "the convention of the state of New York has just met, Gov. Clinton, president, — and that they have determined to discuss the constitution by paragraphs."

"State of New Hampshire. In convention of the delegates of the people of the state of New Hampshire, June the 21st, 1788: The convention having impartially discussed, and fully considered, the constitution for the united states of America, reported to congress by the convention of delegates, etc., and submitted to us by resolution of the general court of this state, . . . do, in the name and behalf of the people of the state of New Hampshire, assent to and ratify," etc.

Ibid., Aug., 1788. "Letter dated Richmond, August 6, says the convention of North Carolina had rejected the new constitution by a majority of 100. New York rejected the proceedings, and Georgia refused to send delegates to the first congress. And yet, both of these states, two years

afterwards, were foremost in zeal and activity in supporting the independence of the united states."

"Delegation to congress from Massachusetts. The Massachusetts general court, Nov. 4, 1788, decided:"

1. That the electors for president, etc., are to be chosen by the two houses on joint ballot;

2. That the senators shall be chosen by the two houses, each having a negative on the other;

3. That the commonwealth be divided into eight districts — the inhabitants of each choosing a representative.

"The state of New Hampshire has chosen Langdon and Bartlette for federal senators."

"Edmond Randolph has resigned the governorship of Virginia, to go into the house of representatives to explain and defend the federal constitution to the legislature."

COLUMBIAN MAGAZINE, 1786-89.

The Columbian Magazine of December, 1786, strongly argues for a "new federal system," as follows:

"We preclude ourselves from the means of calling forth our national strength and resources, by harboring absurd jealousies of the great national council. We withhold powers necessary to render the federal government efficient, and to unite the various interests of the several states. . . . Each state is induced to arrogate to itself individually, that portion of sovereignty, which it ought only to exercise in conjunction with others, as a part of one commonwealth — the empire of the united states. . . . Our political difficulties have been principally occasioned by the want of powers in congress adequate to the government of the united states. Let these be granted," etc.

From the Columbian Magazine, Sept., 1787: "The proposed plan of a federal constitution is sanctioned by the federal convention, thus: 'Done in convention by the unanimous consent of the states present, the 17th day of September,' etc., etc.; and the project is signed by states."

The following is an extract from the journal:

"In convention, Monday, Sept. 17, 1787: present, the states of New Hampshire, Massachusetts, Connecticut, *Mr. Hamilton*, from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia:

"Resolved, that the preceding constitution," etc. They then go on to recommend that it be submitted in each state to a convention elected by the people thereof, and "that as soon as the conventions of nine states shall have ratified it," the congress shall provide for starting it into effect.

Ibid., March, 1788. Extracts from letter of Gen. Washington, Feb. 28, 1788. "The adoption of the constitution in Massachusetts will, I presume, be greatly influential in obtaining a favorable determination upon it in those states where the question is yet to be agitated. No person can, at this moment, pretend to say what will be its fate here. But from what I can collect, I have no doubt of its being accepted."

A letter from Baltimore, dated April 28, says: "Our convention have adopted the new government by a great majority of votes — 63 to 11. Tomorrow it is to be ratified in form."

"South Carolina: In convention May 23, a motion was made and seconded, 'That this convention do assent to, and ratify, the constitution agreed to, on the 17th of September last, by the convention of the united states of America,

held at Philadelphia.' The yeas and nays being called for — were ayes 149, nays 73, majority 76."

Ibid., July, 1788. "On Friday, July 4, 1788, the citizens of Philadelphia commemorated American independence, and the ratification of the federal constitution by ten of the united states." At a previous meeting of the citizens, they had agreed "to celebrate the adoption of the federal constitution on the fourth of July, provided NINE *states* had then entered into the union under the new system. When this agreement took place, eight states had announced their ratifications, and the conventions of the states of New Hampshire, Virginia and New York were in session." Unfavorable rumors caused much anxiety and suspense. "At length the ratification of New Hampshire was received, . . . and on the evening of the second of July, the account of the ratification by Virginia arrived; the satisfaction of the people was made complete, and the TENTH *pillar* triumphantly added to the federal edifice. . . . Ten ships were anchored in the Delaware, to represent the ten states that have adopted the constitution. . . . Ten flags, borne by ten gentlemen, represented the ten states that have adopted the constitution." James Wilson made the speech, saying: "In state after state, at time after time, it was ratified — in some states unanimously."

Ibid., Dec., 1788. "The state of Pennsylvania has passed a law for electing representatives to congress, under the new constitution, . . . and also for the election of electors for president."

Ibid., Dec., 1789. "TWELFTH FEDERAL PILLAR — NORTH CAROLINA. It is with a great degree of satisfaction we announce to the public THE RATIFICATION of the CONSTITUTION of the UNITED STATES by the respectable state of North Carolina." The statement continues — that it was on the 20th of November — "vote, yeas 193, nays 75, majority 118."

It had been rejected by the same state August 1, 1788, by a majority of 100, i. e., 188 to 88.

[Extracts from the Massachusetts Magazine for March, 1789.]

These extracts are added, to show what the leaders and the people then understood the American polity to be. The constitution had then been adopted, and the government provided for had been elected, or was being so; and it was in that or the following month to go into operation.

The absolute integrity and sovereignty of the states as makers and members of, and actors in, the union, are taken for granted throughout.

"Summary of American news and politics."

"NEW HAMPSHIRE. This state is now engaged in her domestic elections," etc. [In the previous number she was said to have "completed" "her federal elections."]

"MASSACHUSETTS also engaged in her state elections. . . . Seven of the federal representatives of this state are chosen," etc.

"CONNECTICUT. Every day adds to the progress this state is making in manufactures," etc. She is complimented on the peaceful and "federal character of her citizens."

"NEW YORK. This state, as we mentioned in our last, is still torn by the feuds of faction." It is further said that "the assembly adjourned" "without appointing federal senators." "The choice of federal representatives for this state commenced the 3d instant."

"NEW JERSEY." "Messrs. Schureman, Cadwallader, Boudinot and Sinnickson are elected" "representatives for that state."

"PENNSYLVANIA. The federal character of this state is further exalted," etc., etc.

"DELAWARE. Of this state, we know but little. Her federal elections are completed, and, enjoying the reputation of being the first which acceded to the new government, she does not appear anxious to engage in the discussion of those great political points, which have created so much uneasiness in some of her sister states."

"MARYLAND. This state is holding out inducements to congress to make Baltimore the place of their residence," etc.

"VIRGINIA. This state has at length completed its choice of ten representatives — eight of whom are said to be federalists," etc.

"SOUTH CAROLINA AND GEORGIA. From these states we have received no other information since our last, than that their electors have given a unanimous vote in favor of his Excellency George Washington, Esq., as president of the united states, by which the memorable circumstance is authenticated that the voice of the WHOLE CONTINENT has called our Fabius Maximus *once more* to rescue our country from the inauspicious ills that have threatened her."

"VERMONT. This state has expressed a wish to be admitted a member of the union," etc.

"RHODE ISLAND. This *foreign* state has again refused to accede to a union with her late sisters. . . . Anxious of enjoying the protection of the union, the inhabitants of Newport, Providence, and other places are determined to sue for its protection, and to be annexed to Massachusetts or Connecticut — thereby to evince to their perverse legislature, that unless they take measures for a speedy adoption of the constitution their boasted sovereignty as an independent state, will ere long be at an end."

"NORTH CAROLINA. This *other* foreign state, has lately evinced a disposition to become a member of the united states," etc.

APPENDIX B.

THE CONSTITUTION OF THE UNITED STATES.

WITH THE PARTIES TO IT, THE AMENDMENTS, AND THE DIFFERING PROVISIONS OF THE CONFEDERATE CONSTITUTION OF 1861.

THE object of this appendix is twofold: not only is it to give a full copy of the present federal constitution, but to exhibit the changes made by the confederate states in their attempt to establish and enjoy federal liberty. Some of the changes were purposed to make more plain the real meaning of the constitution of 1788, according to the southern view; and others to make the federal system more conservative of liberty and human rights, and more effective in harnessing power and preventing usurpation.

Both the federal and confederate constitutions were lifeless plans as to a given state until the breath of life was breathed into it by that state.

The federal was originally adopted by thirteen states, containing less than four millions of people; while the confederate was adopted by nearly the same number of states, containing eleven or twelve millions of people.

It is not necessary to note the constant change of "united" for "confederate" to the intelligent reader.

Precisely where the substitution of the confederate change begins, is designated by a star.

The only acts in American history or records which ever gave any life or validity to the federal constitution are affixed. They were enacted or ordained by each state in its own exclusive convention, which spoke its own exclusive mind. Webster forever settled this point in his self-stultifying speech of 1833, as follows: "Until the constitution was ratified by nine states, it was but a proposal — the mere draft of an instrument. It was like a deed drawn but not executed; . . . it was inoperative paper; . . . it had no authority; it spoke no language."

Of course the enacting or ordaining words affixed, spoke it into life and validity; and the object here is to enable the people to see and know it.

THE CONSTITUTION OF THE UNITED STATES.

We, the people of the united states, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves

and our posterity, do ordain and establish this constitution for the united states of America.

[We, the people of the confederate states, each state acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish this constitution for the confederate states of America.]

ARTICLE I.

SECTION I.

All legislative powers herein * granted shall be vested in a congress of the united states, which shall consist of a senate and house of representatives.

["delegated" is used instead of "granted" in the confederate instrument.]

SECTION II.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall * have the qualifications requisite for electors of the most numerous branch of the state legislature.

[be citizens of the confederate states. But no person of foreign birth, and not a citizen of the confederate states, shall be allowed to vote for any officer, civil or political, state or federal.]

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and * been seven years a citizen of the united states, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

[be a citizen of the confederate states.]

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the united states, and within every subsequent term of ten years, in such manner as they by law shall direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five, and Georgia, three.

["confederacy" is substituted for "union" in the beginning; lower down "slaves" for "other persons;" still lower "fifty" is substituted for "thirty;" and finally, from the words "the state of," the conclusion of the article is as follows: "South Carolina shall be entitled to choose six; the state of Georgia, ten; the state of Alabama, nine; the state of Florida, two; the state of Mississippi, seven; the state of Louisiana, six, and the state of Texas, six."]

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.*

[except that any judicial or other federal officer resident or acting solely within the limits of any state, may be impeached by a vote of two-thirds of both branches of the legislature thereof.]

SECTION III.

1. The senate of the united states shall be composed of two senators from each state, chosen by the legislature thereof, for six years; * and each senator shall have one vote.

[at the regular session next immediately preceding the commencement of the term of service; and each senator shall have one vote.]

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years,* and been nine years a citizen of the united states, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

[and be a citizen of the confederate states, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.]

4. The vice-president of the united states shall be president of the senate, but shall have no vote unless they be equally divided.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the united states.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the united states is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the united states; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

1. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; * but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

["subject to the provisions of this constitution," are the confederate words to go in here.]

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each house shall be the judge of the elections, returns, and qualifications of its members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds,* expel a member.

[" of the whole number," are the confederate words.]

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the united states. They shall in all cases except treason, felony,* and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

[the word "felony" is left out of the confederate instrument.]

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the united states, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the united states, shall be a member of either house during his continuance in office.

[but congress may, by law, grant to the principal officer in each of the executive departments a seat upon the floor of either house, with the privilege of discussing any measures appertaining to his department.]

SECTION VII.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the united states; if he approve he shall sign it, but if not he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.*

[The president may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved, and shall return a copy of such appropriations with his objections to the house in which the bill shall have originated, and the same proceedings shall then be had as in case of other bills disapproved by the president.]

3. Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the united states; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The congress shall have power: —

1. To lay and collect taxes, duties, imposts, and excises,* to pay the debts and provide for the common defence and general welfare of the united states; but all duties, imposts, and excises shall be uniform throughout the united states.

[for revenue necessary to pay the debts and provide for the common defence, and carry on the government of the confederate states; but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the confederate states.]

2. To borrow money on the credit of the united states;

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; *

[but neither this nor any other clause contained in the constitution shall ever be construed to delegate the power to congress to appropriate money for any internal improvement intended to facilitate commerce, except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors, and the removing of obstructions in river navigation, in all which cases such duties shall be laid on the navigation facilitated thereby as may be necessary to pay the costs and expenses thereof.]

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the united states; *

[but no law of congress shall discharge any debt contracted before the passage of the same.]
"uniform laws of naturalization" are words substituted in the confederate instrument for "a uniform rule of naturalization."]

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the united states;

7. To establish post-offices and post-roads;

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the supreme court;

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the united

states, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

17. To exercise exclusive legislation in all cases, whatsoever, over such district (not exceeding ten miles square) as may, by cession * of particular states, and the acceptance of congress, become the seat of the government of the united states, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

[of one or more states.]

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the united states, or in any department or officer thereof.

SECTION IX.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed upon such importation, not exceeding ten dollars for each person.*

[1. The importation of negroes of the African race from any foreign country other than the slave-holding states or territories of the united states of America is hereby forbidden; and congress is required to pass such laws as shall effectually prevent the same.]

2. Congress shall also have the power to prohibit the introduction of slaves from any state not a member of, or territory not belonging to this confederacy.]

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law * shall be passed.

[or law denying or impairing the right of property in negro slaves.]

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any state.* No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

[except by a vote of two-thirds of both houses.]

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditure of all public money shall be published from time to time.

7. No title of nobility shall be granted by the united states; and no person holding any office of profit or trust under them, shall without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

[In this section the numbering is somewhat changed, but the text of both instruments is the same, except in the places noted. Clauses 9 and 10 of the confederate instrument are as follows: 9. Congress shall appropriate no money from the treasury except by a vote of two-thirds of both houses taken by yeas and nays, unless it be asked and estimated for by some one of the heads of departments, and submitted to congress by the president; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the confederate states, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the government, which it is hereby made the duty of congress to establish.]

[10. All bills appropriating money shall specify in federal currency the exact amount of each appropriation, and the purposes for which it is made; and congress shall grant no extra compensa-

tion to any public contractor, officer, agent, or servant after such contract shall have been made or such service rendered.]

[Clauses 11–19 inclusive in this section of the confederate instrument, are amendments 1–8 inclusive in the federal compact. Clause 20 concludes the section in the former, as follows: "20. Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title."]

SECTION X.

1. No state shall enter into any treaty, alliance, or confederation, grant letters of marque or reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

[The confederate instrument leaves out the words "emit bills of credit."]

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the united states; and all such laws shall be subject to the revision and control of the congress.

3. No state shall, without the consent of congress lay any duty of tonnage,* keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.†

[except on sea-going vessels for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the confederate states with foreign nations. And any surplus of revenue thus derived, shall, after making such improvement, be paid into the common treasury; nor shall any state]

† [but when any river divides or flows through two or more states, they may enter into compacts with each other to improve the navigation thereof.]

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a president of the united states of America. He * shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows: —

[and the vice-president shall hold their offices for the term of six years; but the president shall not be re-eligible.]

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the united states, shall be appointed an elector.

[* The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the united states, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have

an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president.* But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]

[This clause was changed in 1804 for the twelfth amendment; and the said twelfth amendment is, *verbatim*, the provision of the confederate constitution on the subject. — Article II., section 1, clauses 3, 4 and 5.]

3. The congress may determine the time of choosing the electors, and on the day on which they shall give their votes: which day shall be the same throughout the united states.

4. No person, except a natural-born citizen * or a citizen of the united states at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the united states.

[of the confederate states, or a citizen thereof at the time of the adoption of this constitution, or a citizen thereof born in the united states prior to the 20th of December, 1860, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained the age of thirty-five years, and been fourteen years a resident within the limits of the confederate states as they may exist at the time of his election.]

5. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

6. The president shall at stated times receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the united states, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation: —

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the united states, and will, to the best of my ability, preserve, protect, and defend the constitution of the united states."

SECTION II.

1. The president shall be commander-in-chief of the army and navy of the united states, and of the militia of the several states, when called into the actual service of the united states; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the united states, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he

shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the united states, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.*

[but no person rejected by the senate shall be re-appointed to the same office during the ensuing recess.]

[In the confederate instrument the third clause of section II. is as follows: —

3. The principal officer in each of the executive departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the president. All other civil officers of the executive department may be removed at any time by the president, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and when so removed, the removal shall be reported to the senate, together with the reason therefor.]

SECTION III.

He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the united states.

SECTION IV.

The president, vice-president, and all civil officers of the united states, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

The judicial power of the united states shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

1. The judicial power shall extend to all cases, in law and equity,* arising under this constitution, the laws of the united states, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the united states shall be a party; to controversies between two or more states; between a state and citizens of another state;† between citizens of different states; between citizens of the

same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.‡

* [The words "in law and equity" left out of the confederate instrument.]
† ["Where the state is plaintiff" are words here added in the confederate pact.]
‡ ["But no state shall be sued by any citizen or subject of any foreign state" is a sentence added to the confederate clause.]

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in such state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION III.

1. Treason against the united states shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.*

[and shall have the right of transit and sojourn in any state of this confederacy with their slaves and other property, and the right of property in such slaves shall not be thereby impaired.]

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.*

[In the confederate constitution, the following is substituted: —

3. No slave or other person held to service or labor in any state or territory of the confederate states, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.]

SECTION III.

1. New states may be admitted by the congress into this union;* but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

[by a vote of two-thirds of the whole house of representatives and two-thirds of the senate, the senate voting by states.]

2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the united states; and nothing in this constitution shall be so construed as to prejudice any claims of the united states, or of any particular state.*

[The confederate states may acquire new territory, and congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the confederate states lying without the limits of the several states, and may permit them, at such time and in such manner as it may by law provide, to form states to be admitted into the confederacy. In all such territory the institution of negro slavery, as it now exists in the confederate states, shall be recognized and protected by congress and the territorial governments, and the inhabitants of the several confederate states and territories shall have the right to take to such territory any slaves lawfully held by them in any of the states or territories of the confederate states.]

SECTION IV.

The united states shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing the amendments, which in either case shall be valid to all intents and purposes, as part of this constitution when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.*

[Upon the demand of any three states, legally assembled in their several conventions, the congress shall summon a convention of all the states to take into consideration such amendments to the constitution as the said states shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the constitution be agreed on by the said convention — voting by states — and the same be ratified by the legislatures of two-thirds of the several states, or by conventions in two-thirds thereof, as the one or the other mode of ratification may be proposed by the general convention, they shall henceforward form a part of this constitution. But no state shall, without its consent, be deprived of its equal representation in the senate.]

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the united states under this constitution, as under the confederation.*

["under the provisional government" are the confederate words concluding above clause, which is the second in the confederate instrument — the first being as follows: —

1. The government established by this constitution is the successor of the provisional government of the confederate states of America, and all the laws passed by the latter shall continue in force, until the same shall be repealed or modified; and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.]

2. This constitution and the laws of the united states which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the united states, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the united states and the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the united states.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.*

[1. The ratification of the conventions of five states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

2. When five states shall have ratified this constitution in the manner before specified, the congress under the provisional constitution shall prescribe the time for holding the election of president and vice-president, and for the meeting of the electoral college, and for counting the votes and inaugurating the president. They shall also prescribe the time for holding the first election of members of congress under this constitution, and the time for assembling the same. Until the assembling of such congress, the congress under the provisional constitution shall continue to exercise the legislative powers granted them, not extending beyond the time limited by the constitution of the provisional government.]

1. DELAWARE STATE.

We, the deputies of the people of the Delaware state, in convention met . . . by these presents do, in virtue of the power to us given, for and in behalf of ourselves and our constituents, fully, freely, and entirely approve of, assent to, RATIFY and confirm the said constitution. Done at Dover, December 7, 1787.

2. COMMONWEALTH OF PENNSYLVANIA.

We, the delegates of the people of the commonwealth of Pennsylvania, in general convention assembled, do in the name and by the authority of the said people, assent to, and RATIFY the foregoing constitution of the united states of America. Done in convention at Philadelphia, December 12, 1787.

3. STATE OF NEW JERSEY.

In convention of the state of New Jersey, we the delegates of the state, . . . do hereby, for, and on the behalf of the people of the said state of New Jersey, agree to, RATIFY, and confirm the proposed constitution. Done December 18, 1787.

4. STATE OF CONNECTICUT.

In the name of the people of the state of Connecticut, we, the delegates of the people of the said state, in general convention assembled, have assented to and ratified, and by these presents do assent to and RATIFY the said constitution. Done January 9, 1788.

5. COMMONWEALTH OF MASSACHUSETTS.

The convention . . . do in the name and in behalf of the people of the commonwealth of Massachusetts, assent to and RATIFY the said constitution for the united states of America. Done Feb. 5, 1788.

6. STATE OF GEORGIA.

We the delegates of the people of the state of Georgia, in convention met, . . . do assent to, RATIFY and adopt the said constitution. Done January 2, 1788.

7. MARYLAND.

We the delegates of the people of the state of Maryland do . . . assent to and RATIFY the said constitution. Done April 28, 1788.

8. STATE OF SOUTH CAROLINA.

The convention . . . do, in the name and behalf of the people of this state hereby assent to and RATIFY the said constitution. Done May 23, 1788.

9. STATE OF NEW HAMPSHIRE.

The convention . . . do, in the name and behalf of the people of the state of New Hampshire, assent and RATIFY the said constitution. Done June 21, 1788.

10. VIRGINIA.

We the delegates of the people of Virginia, . . . now met in convention, . . . do by these presents assent to and RATIFY the constitution recommended, hereby announcing that it is binding upon the said people. Done June 28, 1788.

11. STATE OF NEW YORK.

We the delegates of the people of the state of New York, duly elected and met in convention, . . . do, by these presents, assent to and RATIFY the said constitution. Done at Poughkeepsie, July 26, 1788.

12. STATE OF NORTH CAROLINA.

In convention, resolved that the convention, in behalf of the freemen, citizens and inhabitants of the state of North Carolina, do adopt and RATIFY the said constitution. Done November 21, 1789.

13. RHODE ISLAND.

We the delegates of the people of the state, . . . met in convention, . . . do, by these presents, assent to and RATIFY the said constitution.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE

CONSTITUTION OF THE UNITED STATES OF AMERICA,

PROPOSED BY CONGRESS AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

Amendments of 1791.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the united states, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the united states by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment of 1798.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the united states by citizens of another state, or by citizens or subjects of any foreign state.

Amendment of 1804.

ARTICLE XII.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the united states, directed to the president of the senate. The president of the senate shall, in presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president shall be the presi-

dent, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the united states.

Amendment of 1865.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the united states, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment of 1868.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the united states, and subject to the jurisdiction thereof, are citizens of the united states, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws.

SECTION 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election, for the choice of electors for president and vice-president of the united states, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the united states, or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall be to the whole number of male citizens, twenty-one years of age, in such state.

SECTION 3. No person shall be a senator or representative in congress, or elector of president or vice-president, or hold any office, civil or military, under the united states, or any state, who, having previously taken an oath as a

member of congress, or as an officer of the united states, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the united states, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the united states, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the united states nor any state, shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the united states, or any claim for the loss or emancipation of any slaves; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The congress shall have power to enforce by appropriate legislation, the provisions of this article.

Amendment of 1870.

ARTICLE XV.

SECTION 1. The right of citizens of the united states to vote shall not be denied or abridged by the united states, or by any state, on account of race, color, or previous condition of servitude.

SECTION 2. The congress shall have power to enforce this article by appropriate legislation.

THE ATTESTATION OF THE INSTRUMENT PROPOSED BY THE FRAMERS FOR A FEDERAL CONSTITUTION.

To attest, authenticate and recommend the new plan of a federal constitution to the people of the several states, the deputies to "the convention of states" of 1787, affixed the following words with their names — signed by states; but as Daniel Webster said, the instrument was "inoperative paper" "till ratified [and thereby established] by nine states."

"Done in convention by the unanimous consent of the states present the 17th day of September, A. D. 1787, and of the independence of the U. S. A., the 12th. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON, *President and deputy from Virginia.*

NEW HAMPSHIRE.

John Langdon. Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham. Rufus King.

CONNECTICUT.

Wm. Saml. Johnson. Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston. David Brearly.
William Patterson. Jona. Dayton.

PENNSYLVANIA.

Robert Morris. James Wilson. George Clymer. Gouv. Morris.
B. Franklin. Tho. Fitzsimmons. Thomas Mifflin. Jared Ingersoll.

DELAWARE.

Geo. Read. John Dickinson. Gunning Bedford, jr.
Jaco. Broom. Richard Bassett.

MARYLAND.

James McHenry. Daniel Carroll. Dan. of St. Thos. Jenifer.

VIRGINIA.

John Blair. James Madison, jr.

NORTH CAROLINA.

Wm. Blount. Richard Dobbs Spaight. Hugh Williamson.

SOUTH CAROLINA.

J. Rutledge. Charles Cotesworth Pinckney.
Charles Pinckney. Pierce Butler.

GEORGIA.

William Few. Abr. Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

THE ACTS OF THE CONVENTION AND OF CONGRESS.

The following documents should be printed in connection with the constitution, to show our people how completely the federal idea was held in view and acted on by the sovereigns in making their compact, supreme law, and constitution of government.

1. THE RESOLUTIONS OF THE CONVENTION OF STATES,

as to "the states beginning to act under the new compact"—to use the expression of Washington.

IN CONVENTION, MONDAY, September 17, 1787. Present:—The states of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

"Resolved, That the preceding constitution be laid before the united states in congress assembled, and that it it is the opinion of this convention that it should afterwards be **submitted to a convention of delegates, chosen in each state by the people thereof,** under the recommendation of its legislature, **for their assent and ratification,** and that each convention, assenting to and ratifying the same, should give notice thereof to the united states in congress assembled.

"Resolved, That it is the opinion of this convention that as soon as **the conventions of nine states shall have ratified this constitution,** the united states in congress assembled, should fix a day on which electors should be appointed by **the states which shall have ratified the same,** and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such publication, **the electors should be appointed, and the senators and representatives;** that the electors should meet on the day fixed for the election of the president, and should transmit their votes certified, signed, sealed and directed, as the constitution requires, to the secretary of the united states in congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the senate, for the sole purpose of receiving, opening and counting the votes for president; and that, after he shall be chosen, **the congress, together with the president, should, without delay, proceed to execute this constitution.**

"By the unanimous order of the convention."

2. THE LETTER OF WASHINGTON,

the president of the convention of states, written by its "unanimous order," sufficiently quoted on p. 534 *infra;* and to be found complete in "The Constitution," by William Hickey, p. 188. It is cited to prove that the convention considered the states to be parties to approve or reject; that the government aimed at was to be "**the federal government of these states,**" and that the constitution was considered the "**delegating**" of an "**extensive trust.**"

3. THE ACTION OF THE STATES IN CONGRESS.

"THE UNITED STATES IN CONGRESS ASSEMBLED, Saturday, September 13, 1788. Congress assembled. Present: — New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia; and from Rhode Island Mr. Arnold, and from Delaware Mr. Kearny."

The following preamble and resolution were unanimously adopted: —

"Whereas, the convention assembled in Philadelphia, pursuant to the resolution of Congress of the 21st of February, 1787, did, on the 17th of September in the same year, report to the united states in congress assembled, a constitution for the people of the united states; whereupon congress, on the 28th of the same September, did resolve, unanimously, 'That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case': And whereas **the constitution** so reported by the convention, and by congress transmitted to the several legislatures, **has been ratified in the manner therein declared to be**

sufficient for the establishment of the same,[1] and **such ratifications,** duly authenticated, **have been received** by congress, **and are filed** in the office of the secretary; therefore —

"Resolved, That the first Wednesday in June next be the day for appointing electors in **the several states which,** before the said day, **shall have ratified the said constitution**; that the first Wednesday in February next be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next be the time, and the present seat of congress (New York) the place, for commencing the proceedings under the said constitution."

[1] Art. VII. "The ratifications of the conventions of nine states shall be **sufficient for the establishment of this constitution** between the states so [i.e. by conventions] ratifying the same."

APPENDIX C.

FEDERATION ALWAYS INTENDED.

THE object of the proofs in this part of the Appendix, is to show that from the beginning to the end of the great movement that gave us our present constitution, the states and the fathers always kept in mind, and acted by, the idea and theory of federation. The simplest man with these evidences at hand, can crush the consolidationists.

THE ANNAPOLIS CONVENTION.

The first evidence to present is the report of that body, which, as only five states were present, forebore to deliberate on the purposes of their convention, but recommended that a convention of commissioners of states should be held at Philadelphia, in May, 1787, "**to devise such further provisions as shall . . . render the constitution of the federal government adequate to the exigencies of the union.**" [I. Ell. Deb. 116.]

The proposition of the General Assembly of Virginia, that led to the Annapolis convention, is in I. Elliott's Debates, p. 115.

THE CONGRESS OF STATES.

This body on Feb. 21, 1787, resolved unanimously, that it was expedient that the states hold a convention of their delegates, "**for the sole and express purpose of revising the articles of Confederation,**" to "**render the federal constitution adequate to the exigencies of government, and the preservation of the union.**" [Ibid. 120.]

Copious extracts from the above report and resolution will be found in this Appendix C [No. 3].

No. 1.

THE CREDENTIALS OF MEMBERS OF THE CONVENTION OF STATES OF 1787.

STATE OF NEW HAMPSHIRE.

A. D. 1787.

An act for appointing Deputies from this State to the convention proposed to be held in the City of Philadelphia, in May, 1787, for the purpose of revising the federal constitution.

WHEREAS, in the formation of the federal compact, which frames the bond of union of the American States, it was not possible in the infant state of our

republic, to devise a system which, in the course of time and experience, would not manifest imperfections that it would be necessary to reform;

And whereas, the limited powers, which, by the articles of Confederation, are vested in the Congress of the United States have been found far inadequate to the enlarged purposes which they were intended to produce; and whereas Congress hath, by repeated and most urgent representations, endeavored to awaken this and other States to a sense, etc., etc.

Be it therefore enacted, by the Senate and House of Representatives in General Court convened, that, John Langdon, John Pickering, Nicholas Gilman and Benjamin West, Esqrs., be, and hereby are, appointed commissioners: they or any two of them, are hereby authorized and empowered, as deputies from this State, to meet at Philadelphia, said convention, or any other place to which the convention may be adjourned, for the purposes aforesaid, there to confer with such deputies as are, or may be, appointed by the other States, for similar purposes, and with them **to discuss and decide upon most effectual means to remedy the defects of our federal Union,** and to procure and secure the enlarged purposes which it was intended to effect, and to report such an act to the United States in Congress, as when agreed to by them, and duly confirmed by the several States, will effectually provide for the same.

COMMONWEALTH OF MASSACHUSETTS.

By his Excellency JAMES BOWDOIN, Esq., Governor of the Commonwealth
[L. S.] of Massachusetts.

To the honorable FRANCIS DANA, ELBRIDGE GERRY, NATHANIEL GORHAM, RUFUS KING, and CALEB STRONG, Esqrs., Greeting:

WHEREAS, Congress did, on the 21st day of February, A. D. 1787, resolve, "That, in the opinion of Congress, it is expedient that, on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, **for the sole and express purpose of revising the articles of Confederation,** and reporting to Congress and the several legislatures **such alterations** therein, as shall, when agreed to in Congress, and **confirmed by the States, render the federal constitution adequate to the exigencies of government and the preservation of the Union;**" And, whereas, the Gen. Court have constituted and appointed you their delegates, to attend and represent this commonwealth in the said proposed convention, and have, by a resolution of theirs of the 10th of March last, requested me to commission you for that purpose:

Now, therefore, know ye That in pursuance of the resolutions aforesaid, I do by these presents, commission you, the said Francis Dana, Elbridge Gerry, Nathaniel Gorham, Rufus King, and Caleb Strong, Esqrs., or any three of you, to meet such delegates as may be appointed by other, or any of the other States in the union, to meet in convention at Philadelphia, at the time and for the purposes aforesaid.

In testimony whereof, I have caused the public seal of the commonwealth aforesaid to be hereunto affixed.

Given at the Council Chamber in Boston, the 9th day of April, A. D. 1787.

JAMES BOWDOIN.

STATE OF CONNECTICUT.

At a General Assembly of the State of Connecticut, in America, holden at [L. S.] Hartford, on the second Thursday of May, 1787.

An act for appointing Delegates to meet in Convention of the States, to be held in Philadelphia, on the second Monday of May, instant.

WHEREAS, the Congress of the United States, by their act of the 21st of February, 1787, have recommended that, on the second Monday of May inst., a Convention of delegates, who shall have been appointed by the several states, be held at Philadelphia, for **the sole and express purpose of revising the Articles of Confederation,** —

Be it enacted by the Governor, council, and representatives, in General Court assembled, and by the authority of the same, That the Hon. William Samuel Johnson, Roger Sherman, and Oliver Ellsworth, Esqrs., be, and they are, hereby, appointed delegates to attend said Convention, . . . To represent this state therein, and to confer with such delegates appointed by the several states, for the purpose mentioned in the said act of Congress, that may be present and duly empowered to sit in said convention, and to **discuss upon such alterations and provisions, agreeably to the general principles of republican government, as they shall think proper to render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union**, and they further directed, pursuant to the said act of Congress, to report such alterations and provisions as may be agreed to by a majority of the United States represented in convention, to the Congress of the United States, and to the General Assembly of this state.

A true copy of record. GEORGE WILLYS, *Secretary.*

STATE OF NEW YORK.

In Assembly March 6, 1878.

Resolved, that the Hon. Robert Yates, John Lansing, Jun., and Alexander Hamilton, Esqrs., be, and they are, hereby declared duly nominated and appointed delegates, on the part of this state, to meet such delegates as may be appointed on the part of the other states, respectively, on the second Monday in May next, at Philadelphia, for **the sole and express purpose of revising the Articles of Confederation**, and reporting to Congress, and to the several legislatures, **such alterations and provisions therein** as shall, when agreed to in Congress, and **confirmed by the several states, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union.**

True extracts from the Journals of the Assembly.

JOHN M'KESSON, *Clerk.*

STATE OF NEW JERSEY.

His excellency William Livingston commissions David Brearly, William C. Houston, William Patterson, Jonathan Dayton, and others "to meet such com-

missioners as have been or may be appointed by the other states in the Union" at Philadelphia, 2d May, 1787, to — among other things — "devise such **other provisions** as shall appear to be necessary **to render the constitution of the federal government adequate to the exigencies thereof.**" Each commission concludes thus: "In testimony whereof the great seal of the state is hereunto affixed. Witness William Livingston, Esq., Governor . . . and commander in chief in and over the State and territories thereunto belonging . . . at Trenton the 23d of November A. D. 1786, and of our sovereignty and independence the eleventh.

WILLIAM LIVINGSTON.

COMMONWEALTH OF PENNSYLVANIA.

An Act appointing deputies to the Convention to be held in the city of Philadelphia, for the purpose of revising the federal constitution.

SECTION 1. Whereas, the General Assembly of this commonwealth, taking into their hands serious consideration of the representations heretofore made to the legislatures of the several states in the union, by the United States in Congress assembled, and also weighing the difficulties under which the confederated states now labor, are fully convinced of the necessity of revising the Federal Constitution, for the purpose of making such **alterations and amendments** as the exigencies of our public affairs require: And whereas the legislature of the State of Virginia have already passed an act of that commonwealth, empowering certain commissioners to meet at the city of Philadelphia, in May next, a convention of commissioners or deputies from the different states; and the legislature of this state are fully sensible of the important advantages which may be derived to the United States, and every of them, from co-operating with the commonwealth of Virginia and the other states of the confederation, in the said design.

SECTION 2. Be it enacted, and it is hereby enacted, by the representatives of the freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimmons, James Wilson, and Gouverneur Morris, Esqs., are hereby appointed deputies from this state, to meet in the convention of the deputies of the respective states of North America, to be held at the city of Philadelphia, on the 2d day of the month of May next; and the said Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimmons, James Wilson, and Gouverneur Morris, Esqs., or any four of them, are hereby constituted and appointed deputies from this state, with powers to meet such deputies as may be appointed and authorized by the other states, to assemble in the said convention, at the city aforesaid, and join with them in devising, deliberating on, and discussing, all such **alterations and further provisions** as may be necessary **to render the federal constitution fully adequate to the exigencies of the union,** and in reporting such act or acts, for that purpose, to the united states in congress assembled as, when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.

Enacted into a law at Philadelphia, on Saturday, Dec. 30, in the year of our Lord 1786.

PETE ZACHARY LLOYD,
Clerk of the General Assembly.

Benjamin Franklin was afterwards added to the deputation.

DELAWARE STATE.

In the eleventh year of the independence of the state of Delaware.

An act appointing deputies from this state to the Convention proposed to be held in the City of Philadelphia, **for the purpose of revising the Federal Constitution.**

Whereas the General Assembly of this state are fully convinced of the necessity of **revising the Federal Constitution, and adding thereto such provisions as may render the same more adequate to the exigencies of the Union**; And whereas the legislature of Virginia have already passed an act of that commonwealth, appointing and authorizing certain commissioners to meet, at the city of Philadelphia, in May next, a convention of commissioners or deputies from the different states; and this state being willing and desirous of co-operating with the commonwealth of Virginia, and the other states of the confederation, in so useful a decision:

Be it therefore enacted by the General Assembly of Delaware, that George Reed, Gunning Bedford, Jr., John Dickinson, Richard Bassett, and Jacob Broom, Esqrs., are hereby appointed deputies from this state to meet in the convention deputies of other states . . . and to join with them in devising, deliberating on, and discussing, **such alterations and further provisions as may be necessary to render the Federal Constitution adequate to the exigencies of the Union**; and in reporting such act or acts, for that purpose, to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, may effectually provide for the same. . . .

In testimony whereof, I have hereunto subscribed my name, and caused the great seal of the said state to be affixed to these presents, at New Castle, the 2d day of April, in the year of our Lord 1787, and in the 11th year of the Independence of the United States of America.

Attest, JAMES BOOTH,
Secretary.

THOMAS COLLINS,
President.

STATE OF MARYLAND.

An act for the appointment of, and conferring powers on, deputies from this state to the Federal Convention.

Be it enacted by the General Assembly of Maryland, That the Hon. James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll, John Francis Mercer, and Luther Martin, Esqrs., be appointed and authorized, on behalf of this state, to meet such deputies as may be appointed and authorized, by any other of the united states, to assemble in convention at Philadelphia, for the purpose of revising the federal system, and to join with them in considering such **alterations and further provisions as may be necessary to render the federal constitution adequate to the exigencies of the Union**; and in reporting such purpose to the united states in Congress assembled as when agreed to by them and duly confirmed by the several states, will effectually provide for the same, etc.

COMMONWEALTH OF VIRGINIA.

General Assembly held in the city of Richmond, 16th Oct., A. D. 1786.

An act for appointing deputies from the commonwealth to a convention proposed to be held in the city of Philadelphia, in May next, for the purpose of revising the federal constitution.

Whereas, etc., etc. . . .

Be it therefore enacted by the General Assembly of the commonwealth of Virginia, That seven commissioners be appointed, by joint ballot of both houses of Assembly, who, or any three of them, are hereby authorized, as deputies from this commonwealth, to meet such deputies as may be appointed and authorized by other states, to assemble in Convention at Philadelphia, as above recommended, and to join them in devising and discussing all such **alterations and further provisions as may be necessary to render the Federal Constitution adequate to the exigencies of the Union** ; and in reporting such an act, for that purpose, to the United States in Congress, as, when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.

Under the above act George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason, and George Wythe, were elected as the deputies of Virginia. Patrick Henry declining, James McClurg was, under the law, appointed by Gov. Randolph to fill the place.

THE STATE OF NORTH CAROLINA.

To the Hon. Alexander Martin, Esq., Greeting:

Whereas our General Assembly, in their late session, holden at Fayetteville, by adjournment, in the month of January last, did, by joint ballot of the Senate and House of Commons, elect Richard Caswell, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight, and Willie Jones, Esqrs., deputies to attend a Convention of Delegates from the several United States of America, proposed to be held at the city of Philadelphia, in May next, **for the purpose of revising the Federal Constitution**.

We do, therefore, by these presents, nominate, commission, and appoint you, the said Alexander Martin, one of the deputies for and in behalf, to meet with our other deputies at Philadelphia, on the 1st of May next, and with them, or any two of them, to confer with such deputies as may have been, or shall be, appointed by the other states, **for the purpose aforesaid**: To hold, exercise, and enjoy, the appointment aforesaid, with all powers, authorities, and emoluments, to the same belonging, or in any wise appertaining — **you conforming in every instance**, to the act of our said Assembly, under which you are appointed.

Witness, Richard Caswell, Esq., our governor, captain-general, and commander-in-chief, under his hand and our seal, at Kinston, the 24th day of February, in the eleventh year of our independence, A. D. 1787. Rich. Caswell, By his excellency's command. — Winston Caswell, P. Secretary.

The deputies elected and commissioned as above, were Richard Caswell, Alexander Martin, William R. Davie, Richard D. Spaight, Willie Jones, William Blount and Hugh Williamson.

The act of assembly declares that the said deputies are "to meet and confer with such deputies as may be appointed by the other states for similar purposes, and with them to discuss and decide upon **the most effectual means to remove the defects of our federal union, and to procure the enlarged purposes which it was intended to effect**, and that they report such an act to the General Assembly of this state as, when agreed to by them, will effectually provide for the same."

STATE OF SOUTH CAROLINA.

By his excellency, THOMAS PINCKNEY, Esq., governor and commander-in-chief in and over the state aforesaid.

To the Hon. JOHN RUTLEDGE, Esq., Greeting:

By virtue of the power and authority in me vested by the legislature of this state, in their act passed the 8th day of March last, I do hereby commission you, the said John Rutledge, as one of the deputies appointed from this state, to meet such deputies or commissioners as may be appointed and authorized by other of the United States, to assemble in Convention, at the city of Philadelphia, in the month of May next, or as soon thereafter as may be, and to join with such deputies or commissioners (they being duly authorized and empowered) in **devising and discussing all such alterations, clauses, articles and provisions as may be thought necessary to render the Federal Constitution entirely adequate to the actual situation and future good government of the confederated states**; and that you, together with the said deputies or commissioners, or a majority of them, who shall be present (provided the state be not represented by less than two), do join in reporting such an act to the United States in Congress assembled, as, when approved and agreed to by them, and duly ratified and confirmed by the several states, **will effectually provide for the exigencies of the Union**.

Given under my hand and the great seal of the state, in the city of Charleston, this 10th day of April, in the year of our Lord 1787, and of the sovereignty and independence of the United States of America the eleventh.

THOMAS PINCKNEY.

By his excellency's command, — Peter Freneau, Secretary.

Charles Pinckney, Charles Cotesworth Pinckney, and Pierce Butler were likewise appointed and commissioned in the same manner.

STATE OF GEORGIA.

An Ordinance for the appointment of Deputies from this state, for the Purpose of revising the Federal Constitution.

Be it ordained by the representatives of the freemen of the state of Georgia, in General Assembly met, and by authority of the same, that William Few, Abraham Baldwin, William Pierce, George Walton, William Houston, and Nathaniel Pendleton, Esqrs., be, and they are hereby, appointed commissioners, who, or any two or more of them, are hereby authorized, as deputies from this state, to meet such deputies as may be appointed and authorized by other states, to assemble in Convention at Philadelphia, and to join with them in devising and discussing all such **alterations and further provisions as**

may be necessary to render the Federal Constitution adequate to the exigencies of the Union, and in reporting such an act for that purpose to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.

The commissions issued to like deputies were copies of the following to William Few.

The State of Georgia, by the grace of God, *free, sovereign, and independent.* To the Hon. Wm. Few, Esq.: —

Whereas you, the said William Few, are, in and by an ordinance of the General Assembly of our said state, nominated and appointed a deputy to represent the same in a Convention of the United States, to be assembled at Philadelphia, for the purposes of devising and discussing all such **alterations and further provisions as may be necessary to render the Federal Constitution adequate to the exigencies of the Union. —**

You are therefore hereby commissioned to proceed on the duties required of you in virtue of the said ordinance.

Witness our trusty and well-beloved George Mathews, Esq., our captain-general, governor, and commander-in-chief, under his hand and our great seal, this 17th day of April, in the year of our Lord 1787, and our sovereignty and independence the eleventh. Geo. Mathews.

By his honor's command. — J. Milton, *Secretary.*

No. 2.

THE ACTS OR ORDINANCES OF RATIFICATION OF THE FEDERAL CONSTITUTION.

On Friday, September 28th, 1787, the states in Congress having received the plan of the constitution with the resolutions and letter accompanying the same — all as reported by the convention — did resolve that they "be transmitted to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case." [For this and the following acts, see I. Ell. Deb. 319 *et seq.*]

Whereupon each state by itself, in its own time, way, and place, and in its own convention, which was composed of its own subjects and delegates, and was authorized exclusively with its power; deliberated upon and finally ratified the said constitution in the following order, and in the following words respectively — history giving no sign or hint of any other words, or will, than those of the following states, to vitalize or give legal force to, the present federal system.

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1. DELAWARE STATE

We, the deputies of the people of the Delaware state, in Convention met, **having taken in our serious consideration the Federal Constitution proposed** and agreed upon by the deputies of the United States, in a General Convention held at the city of Philadelphia, on the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, have approved, assented to, ratified, and confirmed, and **by these presents do, in virtue of the power and authority to us given,**

for and in behalf of ourselves and our constituents, fully, freely, and entirely approve of, assent to, ratify, and confirm, the said Constitution.

Done in Convention, at Dover, this seventh day of December, in the year aforesaid, and in the year of the independence of the United States of America the twelfth.

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2. COMMONWEALTH OF PENNSYLVANIA.

In the name of the People of Pennsylvania.

Be it known unto all men, that **we, the delegates of the people of the commonwealth of Pennsylvania,** in General Convention assembled, have assented to and ratified, and by these presents **do, in the name and by the authority of the same people,** and for ourselves, **assent to and ratify the foregoing Constitution** of the United States of America.

Done in Convention at Philadelphia, the twelfth day of December, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

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3. STATE OF NEW JERSEY.

In Convention of the State of New Jersey.

Whereas, a Convention of delegates from the following states, viz., — New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, — met at Philadelphia, for the purpose of deliberating on, and forming a Constitution for the United States of America, — finished this session on the 17th day of September last, and reported to Congress the form which they had agreed upon, in the words following, viz:

[See the Constitution.] . . .

Now be it known, that **we, the delegates of the state of New Jersey,** chosen by the people thereof, for the purpose aforesaid, **having maturely deliberated on and considered the aforesaid proposed Constitution, do hereby, for and on the behalf of the people of the said State of New Jersey, agree to, ratify, and confirm, the same,** and every part thereof.

Done in convention, by the unanimous consent of the members present, this 18th day of December, in the year of our Lord 1787, and of the independence of the United States of America the twelfth.

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4. STATE OF CONNECTICUT.

In the name of the People of the State of Connecticut.

We, the delegates of the people of said state, in general Convention assembled, pursuant to an act of the legislature in October last, **have assented to, and ratified, and by these presents do assent to, ratify, and adopt the constitution** reported by the convention of delegates in Philadelphia, on the 17th day of September, A. D. 1787, for the United States of America. Done in Convention, this 9th day of January, A. D. 1788.

5. COMMONWEALTH OF MASSACHUSETTS.

The Convention having impartially discussed, and fully considered, the Constitution for the United States of America, reported to Congress by the Convention of Delegates from the United States of America, and submitted to us by a resolution of the General Court of the said commonwealth, passed the 25th day of October last past, — and acknowledging, with grateful hearts, the goodness of the Supreme Ruler of the universe, in affording the people of the United States, in the course of His providence, an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new Constitution, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, — **do, in the name and in behalf of the people of the commonwealth of Massachusetts, assent to and ratify the said Constitution for the United States of America.**

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6. STATE OF GEORGIA.

Whereas the form of a Constitution for the government of the United States of America, was, on the 17th day of September, 1787, agreed upon and reported to Congress by the deputies of the said United States convened in Philadelphia, which said Constitution is written in the words following, to-wit: [see the Constitution]. . . .

Now know ye, that **we, the delegates of the people of the state of Georgia, in Convention met,** pursuant to the resolutions of the legislature aforesaid, having taken into our serious consideration the said Constitution, have assented to, ratified and adopted, and by these presents **do, in virtue of the powers and authority to us given by the people of the said state for that purpose,** for and in behalf of ourselves and constituents, fully and entirely **assent to, ratify and adopt the said Constitution.**

Done in Convention, at Augusta, in the said state, on the 2d day of January, in the year of our Lord, 1788, and of the independence of the United States the twelfth.

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7. MARYLAND.

We, the delegates of the people of the state of Maryland, having fully considered the Constitution of the United States of America, reported to Congress by the Convention of delegates from the United States of America, held at Philadelphia, on the 17th day of September, in the year 1787, of which the annexed is a copy, and submitted to us by a resolution of the General Assembly of Maryland, in November session, 1787, **do, for ourselves, and in the name and on the behalf of the people of this state, assent to and ratify the said Constitution.**

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8. STATE OF SOUTH CAROLINA.

In Convention of the people of the state of South Carolina, by their representatives, held in the city of Charleston, on Monday, the 12th day of May,

and continued by divers adjournments to Friday, the 23d day of May, Anno Domini, 1788, and in the 12th year of the independence of the United States of America.

The Convention, having maturely considered the Constitution, or form of government, reported to Congress by the Convention of delegates from the United States of America, and submitted to them by a resolution of the legislature of the state, passed the 17th and 18th days of February last, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to the people of the said United States, and their posterity, — **do, in the name and behalf of the people of this state, hereby assent to and ratify the said Constitution.**

Done in convention, the 23d day of May, in the year of our Lord, 1788, and of the independence of the United States of America the twelfth.

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9. STATE OF NEW HAMPSHIRE.

The Convention having impartially discussed and fully considered the Constitution for the United States of America, reported to Congress by the Convention of Delegates from the United States of America, and submitted to us by a resolution of the General Court of said state, passed the 14th day of December last past, and acknowledging with grateful hearts the goodness of the Supreme Ruler of the universe, in affording the people of the United States, in the course of His providence, an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new Constitution, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, — **do, in the name and behalf of the people of the state of New Hampshire, assent to and ratify the said Constitution for the United States of America.**

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10. VIRGINIA.

We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and **now met in Convention,** having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared as well as the most mature deliberation hath enabled us, to decide thereon, — do, in the name and in behalf of the people of Virginia: declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them, whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them, and at their will; that, therefore, no right of any denomination, can be cancelled, abridged, restrained, or modified by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained, or modified, by any authority of the United States. With these impressions, with a solemn appeal to the Searcher of all hearts for the

purity of our intentions, and under the conviction that whatsoever imperfections may exist in the Constitution, ought rather to be examined in the mode prescribed therein, than to bring the Union into danger by a delay with a hope of obtaining amendments previous to the ratifications,

We, the said delegates, in the name and in behalf of the people of Virginia, do, by these presents, assent to and ratify the Constitution recommended, on the 17th day of September, 1787, by the Federal Convention, for the government of the United States, hereby announcing to all those whom it may concern, that the said Constitution is binding upon the said people, according to an authentic copy hereto annexed, in the words following. [See the Constitution.]

Done in Convention, this 26th day of June, 1788.

11. STATE OF NEW YORK.

We, the delegates of the people of the state of New York, duly elected and met in Convention, having maturely considered the Constitution for the United States of America, agreed to on the 17th day of September, in the year 1787, by the convention then assembled at Philadelphia, in the commonwealth of Pennsylvania, (a copy whereof precedes these presents,) and having also seriously and deliberately considered the present situation of the United States, — do declare and make known, — etc., etc. . . .

Under these impressions, and declaring that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid are consistent with the said Constitution, and in confidence that the amendments which shall have been proposed to the said Constitution will receive an early and mature consideration, — We, the said delegates, **in the name and in the behalf of the people of the state of New York, do, by these presents, assent to and ratify the said Constitution.**

Done in Convention, at Poughkeepsie, in the county of Duchess, in the state of New York, the 26th day of July, in the year of our Lord 1788.

12. STATE OF NORTH CAROLINA.

In Convention.

Whereas the General Convention which met at Philadelphia, in pursuance of a recommendation of Congress, did recommend to the citizens of the United States a Constitution or form of government in the following words, namely, —

" We, the people," etc. [Here follows the Constitution of the United States, verbatim].

Resolved, That **this Convention, in behalf of the freemen, citizens and inhabitants of the state of North Carolina, do adopt and ratify the said Constitution and form of government.**

Done in Convention, this 21st day of November, 1789.

13. RHODE ISLAND.

Ratification of the Constitution by the Convention of the state of Rhode Island, and Providence Plantations.

We, the delegates of the people of the state of Rhode Island and Providence Plantations, duly elected and met in Convention, having

maturely considered the Constitution for the United States of America, agreed to on the seventeenth day of September, in the year one thousand seven hundred and eighty-seven, by the Convention then assembled at Philadelphia, in the commonwealth of Pennsylvania (a copy thereof precedes these presents), and having also seriously and deliberately considered the present situation of this state, do declare and make known, etc., etc. . . .

Under these impressions, and declaring that the rights aforesaid, cannot be abridged or violated, and that the explanations aforesaid are consistent with the said Constitution, and in confidence that the amendments hereafter mentioned will receive an early and mature consideration, and, conformably to the fifth article of said Constitution, speedily become a part thereof,—We, the said delegates, **in the name and in the behalf of the people of the state of Rhode Island and Providence Plantations, do, by these presents, assent to and ratify the said Constitution.**

Done in Convention, at Newport, in the county of Newport, in the state of Rhode Island and Providence Plantations, the twenty-ninth day of May, in the year of our Lord one thousand seven hundred and ninety, and in the fourteenth year of the independence of the United States of America.

No. 3.

EVIDENCES OF THE INTENT OF THE CONVENTION OF 1787.

EXTRACTS FROM REPORT OF THE COMMISSIONERS TO THE ANNAPOLIS CONVENTION, 1786.

That there are important defects in the system of the federal government, is acknowledged by the acts of all those states which have concurred in the present meeting; that the defects, upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs, both foreign and domestic, as may reasonably be supposed to merit *a deliberate and candid discussion, in some mode which will unite the sentiments and councils of all the States.* In the choice of the mode, your commissioners are of opinion that *a convention of deputies from the different States,* for the *special and sole purpose* of entering into this investigation, and *digesting a plan for supplying such defects as may be discovered to exist,* will be entitled to a preference, from considerations which will occur without being particularized.

. . . . . .

Under this impression, your commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the Union, *if the States,* by whom they have been respectively delegated, *would themselves concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet* in Philadelphia, on the second Monday in May next, to take into consideration the situation of the United States, *to provide such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union;* and to report *such an act for that purpose* to the United States in Congress assembled, as, when agreed to by

them, and afterwards confirmed by the legislatures of every State, will effectually provide for the same.

. . . . . .

Dated at Annapolis, Sept. 14, 1786.

RESOLUTION

adopted in Congress, Wednesday, February 21, 1787.

Resolved, That, in the opinion of Congress, it is expedient that, on the second Monday in May next, *a convention of delegates, who shall have been appointed by the several States*, be held at Philadelphia, *for the sole and express purpose of revising the Articles of Confederation*, and reporting to Congress and the several legislatures such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, *render the federal Constitution adequate to the exigencies of government, and the preservation of the Union.* [I. Ell. Deb. 120.]

EXTRACTS FROM MR. RANDOLPH'S RESOLUTIONS,

offered in the convention of States, May 29, 1787.

"11. Resolved, that a republican government . . . ought to be guaranteed by the united states to each state.

"12. Resolved, that provision ought to be made for the continuance of Congress . . . until a given day after the reform of the articles of union shall be adopted. . . .

"13. Resolved, that provision ought to be made for the amendment of the articles of the union, whensoever it shall seem necessary.

"14. Resolved, that the legislative, executive, and judiciary powers, within the several States, ought to be bound by oath, to support the Articles of Union.

"15. Resolved, that the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon."

The resolutions of Mr. Randolph were referred to Committee of the Whole, on the same day. [V. Ell. Deb. 128.]

THE SAME RESOLUTIONS

as altered, amended, and agreed to, IN COMMITTEE OF THE WHOLE HOUSE, June 19, 1787.

"15. Resolved, That provision ought to be made for the continuance of Congress and their authorities, until a given day after the reform of the articles of union shall be adopted, and for the completion of all their engagements.

"16. Resolved, That a republican constitution and its existing laws ought to be guaranteed to each State by the United States.

"17. Resolved, That provision ought to be made for the amendment of the articles of union whensoever it shall seem necessary.

"18. Resolved, That the legislative, executive and judiciary powers, within the several States, ought to be bound by oath to support the articles of union.

"19. Resolved, That the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures to be expressly chosen by the people to consider and decide thereon." [V. Ell. Deb. 189, 211.]

THE SAME RESOLUTIONS

were thereafter taken up and fully and finally deliberated upon by THE CONVENTION itself for more than a month; and they then appear, as follows, in a series of twenty-three, unanimously referred to the committee on detail; who, on Aug. 6, — the convention having adjourned meanwhile, to await the committee's action, — *reported them back in the shape of the present constitution*, which was subsequently amended only in style and polish by the committee on revision and style, — the chairman of which was Gouverneur Morris. No principle or idea was varied that has any reference to this great question — *whether the States were nationalized or federalized?*

"XVIII. Resolved, That *a republican form of government shall be guaranteed to each State;* and that each State shall be protected against foreign and domestic violence.

"XIX. Resolved, That provision ought to be made for amendment of the *articles of union* whensoever it shall seem necessary.

"XX. Resolved, That the legislative, executive, and judiciary powers within the several States, and of the national government, ought to be bound by oath to support *the articles of union.*

"XXI. Resolved, That *the amendments which shall be offered to the Confederation by the Convention* ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon." [V. Ell. Deb. 375.]

EXTRACT FROM THE PROCEEDINGS OF THE FEDERAL CONVENTION, MAY 30, 1787,

showing that the Convention were determined not to depart from the *federal* idea. [See Madison's Journal, V. Ell. Deb. 132.]

Roger Sherman, from Connecticut, took his seat. The house went into Committee of the Whole on the State of the Union. Mr. Gorham was elected to the chair by ballot.

The propositions of Mr. Randolph, which had been referred to the Committee, being taken up, he moved, on the suggestion of Mr. G. Morris, that the first of his propositions, to wit: "Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare," mutually be postponed, in order to consider the three following: —

"1. That a union of States merely federal will not accomplish the objects proposed by the Articles of Confederation — namely, common defence, security of liberty, and general welfare.

"2. That no treaty or treaties among the whole or part of the States, as individual sovereignties, would be sufficient.

"3. That a *national* government ought to be established, consisting of a *supreme* legislative, executive and judiciary."

The motion for postponing was seconded by Mr. G. Morris, and unanimously agreed to. Some verbal criticisms were raised against the first proposition, and it was agreed, on motion of Mr. Butler, seconded by Mr. Randolph, to pass on to the third, which underwent a discussion, less, however, on its general merits than on the force and extent of the particular terms *national* and *supreme*.

. . . . .

On the question, as moved by Mr. Butler, on the third proposition, it was resolved in Committee of the Whole, "that a national government ought to be established, consisting of a supreme legislative, executive and judiciary." Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, ay, 6; Connecticut, no, 1; New York, divided, [Colonel Hamilton, ay, Mr. Yates, no.]

YATES' VERSION

of what occurred on said May 30, 1787, is as follows: [See "Yates' Minutes," I. Ell. Deb. 391].

WEDNESDAY, May 30, 1787.

Convention met pursuant to adjournment. The Convention, pursuant to order, resolved itself into a committee of the whole. Mr. Gorham [a member from Massachusetts], appointed chairman.

Mr. Randolph then moved his first resolve, to-wit: —

"Resolved, That the Articles of Confederation ought to be so corrected and enlarged, as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare,"

Mr. G. Morris observed, that it was an unnecessary resolution, as the subsequent resolutions would not agree with it. It was then withdrawn by the proposer, and, in lieu thereof, the following were proposed, to-wit:

"1. Resolved, That a union of States, merely federal, will not accomplish the objects proposed by the Articles of Confederation, namely, common defence, security of liberty, and general welfare.

"2. Resolved, That no treaty or treaties among any of the States, as sovereign, will accomplish or secure their common defence, security of liberty, and general welfare.

"3. Resolved, That a national government ought to be established, consisting of a supreme judicial, legislative and executive.

In considering the question on the 1st resolve, various modifications were proposed, when Mr. Pinckney observed, at last, that, if the Convention agreed to it, it appeared to him that their business was at an end; for, as the powers of the house in general were to revise the present Confederation, and to alter or amend, as the case might require, to determine its insufficiency, or incapability of amendment, or improvement, must end in the dissolution of the powers.

This remark had its weight; and in consequence of it, the 1st and 2d resolves were dropped, and the question agitated on the 3d.

This last resolve had also its difficulties: the term supreme required explanation. It was asked whether it was intended to annihilate State governments. It was answered, only so far as the powers intended to be granted to the new government should clash with the States, when the latter were to yield.

For the resolution: Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina. *Against it* Connecticut; New York, *divided;* Jersey and other states unrepresented."

THE NATIONAL IDEA REPROBATED BY THE CONVENTION.

By the 19th of June, the COMMITTEE OF THE WHOLE convention had discussed and agreed on the 23 resolutions to be found in V. Elliott's Debates 189 — the first of them being as follows:

"Resolved that in the opinion of this committee a national government ought to be established, consisting of a supreme legislative, executive, and judiciary."

This brought the convention face to face with the national idea as a matter not merely descriptive or of common parlance, but legal, technical, and institutional.

Whereupon followed the remarkable elimination by THE CONVENTION, on motion of Mr. Ellsworth, by striking out "NATIONAL" from all the resolutions, and substituting the "FEDERAL" idea and phrase — "THE UNITED STATES." In those resolutions this change was made 26 times. The following extract from Madison's Journal is decisive. [Ibid. 214.]

"The first resolution of the report of the Committee of the Whole being before the House.

"Mr. Ellsworth, seconded by Mr. Gorham, moved to alter it, so as to run 'that the Government of the United States ought to consist of a supreme legislative, executive, and judiciary.' This alteration, he said, would drop the word *national*, and retain the proper title 'the United States.' He could not admit the doctrine that a breach of any of the Federal Articles could dissolve the whole. It would be highly dangerous not to consider the Confederation as still subsisting. He wished, also, the plan of the Convention to go forth as an amendment of the Articles of the Confederation, since, under this idea, the authority of the legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification, several succeeding conventions within the states would be unavoidable. He did not like these conventions. They were better fitted to pull down than to build up constitutions.

"Mr. Randolph did not object to the change of expression, but apprised the gentlemen who wished for it, that he did not admit it for the reasons assigned; particularly that of getting rid of a reference to the people for ratification.

"The motion of Mr. Ellsworth was acquiesced in, *nem. con.*

"The second resolution, 'That the national legislature ought to consist of two branches,' being taken up, the word 'national' struck out, as of course."

THE LAST VAIN EFFORT TOWARDS NATIONALIZATION.

Several attempts, mentioned in Part III. Chapter VII. were made in the Convention, to give the general government legislative control over the laws of the states. All of them failed. The last on Aug. 23, 1787, is peculiarly instructive, and appears as follows in Madison's Journal. [V. Ell. Deb. 467 *et seq.*]

"On the question, then to agree to the 18th clause of article VII. section 1 [of the constitution as it was then formed. See Ibid. 376.] as amended, it passed in the affirmative *nem. con.*

"Mr. Charles Pinckney moved to add, as an additional power to be vested in the legislature of the United States, — 'to negative all laws passed by the several states, interfering, in the opinion of the legislature with the general interests and harmony of the Union, provided that two-thirds of the members of each House assent to the same.'

"This principle, he observed, had formerly been agreed to. He considered the precaution as essentially necessary. The objection drawn from the predomi-

nance of the large states had been removed by the equality established in the Senate.

"Mr. Broom seconded the proposition.

"Mr. Sherman thought it unnecessary, the laws of the general government being supreme and paramount to the state laws, according to the plan as it now stands.

"Mr. Madison proposed that it should be committed. He had been, from the beginning, a friend to the principle, but thought the modification might be made better.

"Mr. Mason wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the sanction of the general legislature? Is this to sit constantly, in order to receive and revise the state laws? He did not mean, by these remarks, to condemn the expedient, but he was apprehensive that great objections would lie against it.

"Mr. Williamson thought it unnecessary and, having been already decided, a revival of the question was a waste of time.

"Mr. Wilson considered this as the key-stone wanted to complete the wide arch of government we are raising. The power of self-defence had been urged as necessary for the state government. It was equally necessary for the general government. The firmness of judges is not, of itself, sufficient. Something further is requisite. It will be better to prevent the passage of an improper law, than to declare it void, when passed.

"Mr. Rutledge. If nothing else, this alone would damn, and ought to damn the Constitution. Will any state ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle.

"Mr. Ellsworth observed, that the power contended for would require, either that all laws of the state legislature should, previous to their taking effect, be transmitted to the general legislature, or be repealable by the latter; or that the state executives should be appointed by the general government, and have a control over the state laws. If the last was meditated, let it be declared.

"Mr. Pinckney declared, that he thought the state executives ought to be so appointed, with such a control; and that it would be so provided, if another Convention should take place.

"Mr. Gouverneur Morris did not see the utility or practicability of the proposition of Mr. Pinckney, but wished it to be referred to the consideration of a committee.

"Mr. Langdon was in favor of the proposition. He considered it as resolvable into the question, whether the extent of the national Constitution was to be judged of by the general, or the state governments.

"On the question for commitment, it passed in the negative.

"New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, no, 6.

"Mr. Pinckney then withdrew his proposition."

THE CONVENTION WAS UNANIMOUS FOR FEDERALIZATION.

The final and unanimous sense of the Convention on this subject, is shown by the following extracts from the constitution as originally reported on August 6, and the action of the convention thereon.

"We the people of the states of New Hampshire, Massachusetts, Rhode Island

and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia do ordain, declare, and establish, the following constitution, for the government of ourselves and our posterity: —

"Article I. The style of the government shall be the United States of America.

"Article II. The government shall consist of supreme legislative, executive, and judicial powers. . . .

"Tuesday, Aug. 7. IN CONVENTION. The report of the committee of detail being taken up, . . ."

The preamble of the report was agreed to *nem. con.* So were Articles I and II.

This was the final and unanimous decision of the convention of states on the subject in hand. It was never reversed or modified. It was equivalent to saying — *this is a federation of sovereign commonwealths.*

THE LETTER OF THE CONVENTION TO CONGRESS,

which General Washington wrote "by unanimous order of the Convention," shows that the said convention unanimously intended to continue "THE FEDERAL GOVERNMENT OF THESE STATES," and that federal agency's powers were all "DELEGATED" in "TRUST."

"We have now the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable. The friends of our country have long seen and desired, that the power of making war, peace and treaties; that of levying money and regulating commerce; and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union. But the impropriety of delegating such extensive trust to one body of men is evident. Thence results the necessity of a different organization."

"It is obviously impracticable on the federal government of those states, to secure all rights of independent sovereignty (government?) to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty, to preserve the rest.

"That it will meet the full and entire approbation of every state is not perhaps to be expected. But each will doubtless consider that had her interest alone been consulted, the consequences might have been particularly disagreeable and injurious to others." . . .

THE SYSTEM CONSIDERED AS FEDERAL BY THE FATHERS.

EXTRACT FROM PENDLETON'S SPEECH IN VIRGINIA CONVENTION.

But the power of the Convention is doubted. What is the power? To propose. Not to determine. This power of proposing was very broad; it extended to remove all defects in government; the members of that Convention who were to consider all the defects in our general government, were not confined to any particular plan. Were they deceived? This is the proper question here. Suppose the paper on your table dropped from one of the planets; the people found it, and sent us here to consider whether it was proper for their adoption; must we not obey them?

FROM NUMBER XL OF THE FEDERALIST, BY MR. MADISON.

The second point to be examined is, whether the Convention were authorized to frame, and propose this mixed Constitution. The powers of the Convention ought, in strictness, to be determined, by an inspection of the commissions given to the members by their respective constituents. As all of these, however, had reference, either to the recommendation from the meeting at Annapolis, in Sept., 1786, or to that from Congress, in February, 1787, it will be sufficient to turn to these particular acts.

. . . . . .

From these two acts, it appears, 1st, that the object of the Convention, was to establish, in these States, *a firm national government;* 2d, that this government was to be such as would be *adequate to the exigencies of government*, and *the preservation of the Union;* 3d, that those purposes were to be effected by *alterations and provisions in the articles of Confederation*, — as it is expressed in the act of Congress; or by *such further provisions as should appear necessary* — as it stands in the recommendatory act from Annapolis; 4th, that the alterations and provisions were to be reported to Congress, and to the states, in order to be agreed to by the former and confirmed by the latter.

. . . . . .

No stress, it is presumed, will, in this case, be laid on the *title;* a change of that could never be deemed an exercise of ungranted power. *Alterations* in the body of the instrument are expressly authorized. *New provisions* therein are also expressly authorized. Here there is a power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted that this power is infringed, so long as a part of the old articles remain?

. . . . . .

Will it be said that the *fundamental principles* of the Confederation were not within the purview of the Convention, and ought not to have been varied? I ask, what are these principles? Do they require, that in the establishment of the constitution, the states should be regarded as distinct and independent sovereigns? They are so regarded by the constitution proposed."

THE FATHERS REPUDIATED THE NATIONAL IDEA,

in the state ratifying conventions. Two will be quoted for all: Said FISHER AMES in that of Massachusetts: "No argument against the new plan has made a deeper impression than this, that it will produce a consolidation of the states. This is an effect which all good men will deprecate. . . . The state governments are essential parts of the system. . . . The *senators* represent the *sovereignty of the states* in the quality of ambassadors of the states. . . . A consolidation of the states . . . would subvert the new constitution, and against which this very article [the one providing for the senate] so much condemned, is our best security. Too much provision cannot be made against consolidation. . . . This article seems to be an excellence of the constitution, and affords just ground to believe that it will be, in practice as in theory, a *federal* republic. [II. Ell. Deb. 45.]

Said CHANCELLOR PENDLETON, in the Virginia convention: "But it is represented to be a consolidated government, annihilating that of the states — a consolidated government, which so extensive a territory as the united states cannot admit of, without terminating in despotism. If this be such a government I will confess with my worthy friend [Henry] that it is inadmissable over

such a territory as this country. . . . It is the interest of the federal to preserve the state governments; upon the latter the existence of the former depends. . . . Unless, therefore, there be state legislatures to continue the existence of congress, and preserve order and peace among the inhabitants, this general government . . . must itself be destroyed. . . . I wonder how any gentleman could conceive an idea of the possibility of the former destroying the latter." [III. Ell. Deb. 39.] See also, to the same effect, the extracts from the Federalist in Appendix.

APPENDIX D.

EXTRACTS FROM THE FEDERALIST, INCLUDING THE MOST OF NO. 39.

This Appendix consists of many extracts from that master-piece of exposition — the Federalist. It is decisive on the character of our general polity, while it entirely supports this book. The leading points proved by these quotations, are

1. That the new compact was to form "a more perfect union" of states, which the fathers regarded as a confederacy.

2. That the "essential component parts" of the new polity was commonwealths — named and provided for as parties to, and actors in, the system.

3. That the federal government provided for by the compact was to operate on persons, and not on states.

4. That Webster, Story, and the federal supreme court have committed a gross offence against sovereignty, by declaring that "a change had been made from a confederacy of states to a different system."

The italics, etc., are all in the text [J. C. Hamilton's edition], but the heavy-faced type is resorted to by the author to make the support of his contentions the more conspicuous.

These extracts should be read thoughtfully in connection with Chapters VII. Part III., and V. Part IV.

THE FEDERALIST.

Number I.

[Hamilton.]

". . . I propose, in a series of papers, to discuss the following interesting particulars. . . . *The utility of the Union to your political prosperity. . . . The insufficiency of the present confederation to preserve that* Union. . . . *The necessity of a government, at least equally energetic with the one proposed, to the attainment of this object. . . . The conformity of the proposed constitution to the principles of republican government. . . . Its analogy to your own state constitution* . . . and lastly, *The additional security, which its adoption will afford to the preservation of that species of government, to liberty, and to property. . . .*"

Number IX.

[Hamilton.]

The Utility of the Union as a Safeguard against Domestic Faction and Insurrection.

". . . A Firm union will be of the utmost moment to the peace and liberty of the states, as a barrier against domestic faction and insurrection. . . .

"So far are the suggestions of Montesquieu from standing in opposition to a general union of the states, that he explicitly treats of a Confederate Republic as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism.

"'It is very probable,' says he, 'that mankind would have been obliged at length, to live constantly under the government of a Single Person, had they not contrived a kind of constitution, that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a Confederate Republic.

"'This form of government is a convention, by which several smaller *states* agree to become members of a larger one, which they intend to form. It is a kind of **assemblage of societies, that constitute a new one,** capable of increasing by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body.

"'A republic of this kind, able to withstand an external force, may support itself without any internal corruption. The form of this society prevents all manner of inconveniences.

"'If a single member should attempt to usurp the supreme authority, he could not be supposed to have equal authority and credit in all the **confederate states.** . . .

"'Should a popular insurrection happen in one of the confederate states, the others are able to quell. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on the one side, and not on the other; **the confederacy may be dissolved, and the confederates preserve their sovereignty.**

"'As this government is composed of small republics it enjoys the internal happiness of each; and, with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies.'" [Spirit of Laws, Book IX. Ch. I.]

I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the union, and must effectually remove the false impressions which a misapplication of the other parts of the work was calculated to produce. . . .

The definition of a *confederate republic* seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects, of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished, so long as it subsists by a constitutional necessity for local purposes, though it should be in perfect subordination to the general authority of the union it would still be, in fact and in theory, **an association of states, or a confederacy. . .**"

Number XIV.

[Madison.]

". . . The immediate object of the federal constitution is to secure the union of the thirteen primitive states, which we know to be practicable; and to add to them such other states as may arise in their own bosoms, or in their neighborhoods, which we cannot doubt to be equally practicable. . . .

"Happily for America, happily, we trust, for the whole human race, they [the people] pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. **They formed the design of a great confederacy,** which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the union, this was the work most difficult to be executed; **this is the work** which has been **new modelled by the act of your convention, and it is that act** on which you are now to deliberate and decide. . . ."

Number XV.

[Hamilton.]

". . . The great, and radical vice, in the construction of the existing confederation, is in the principle of Legislation for States or Governments in their Corporate or Collective Capacities, and as contradistinguished from the Individuals of whom they consist. Though this principle does not run through all the powers delegated to the union; yet it pervades and governs those on which the efficacy of the rest depends. . . .

". . . We must extend the authority of the union, to the persons of the citizens — the only proper objects of government.

"Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of courts and ministers of justice, or by military force; by the coercion of the magistracy, or the coercion of arms. The first kind can evidently apply only to men; the last kind must of necessity be employed against bodies politic or communities or states. It is evident that there is no process of a court, by which their observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violation of their duty; but these sentences can only be carried into execution by the sword. In an association where the general authority is confined to the collective bodies of the communities that compose it, every breach of the laws must involve a state of war, and military execution must become the only instrument of civil obedience. Such a state of things can certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it. . . ."

Number XX.

[Hamilton & Madison.]

. . . Experience is the oracle of truth; and when its responses are unequivocable, they ought to be conclusive and sacred. The important truth, which it unequivocally pronounces in the present case, is, that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals; as it is a solecism in theory, so in practice, it is subversive of the order and ends of civil polity, by substituting *violence* in the place of *law*, or the destructive *coercion* of the *sword*, in the place of the mild and salutary *coercion* of the *magistracy*. . . ."

Number XXVII.

[Hamilton.]

". . . The hope of impunity, is a strong incitement to sedition; the dread of punishment, a proportionably strong discouragement to it. Will not the government of the union, which, if possessed of a due degree of power, can call to its aid the collective resources of **the whole confederacy**, be more likely to repress the *former* sentiment, and to inspire the *latter*, than that of a single state, which can only command the resources within itself? A turbulent faction in a state, may easily suppose itself able to contend with the friends to the government in that state; but it can hardly be so infatuated, as to imagine itself equal to the combined efforts of the union. If this reflection be just, there is less danger of resistance from irregular combinations of individuals, to the authority, of **the confederacy**, than to that of a single member.

Number XXXIX.

[Madison.]

"The Conformity of the Plan to Republican Principles. An objection in respect to the powers of the Convention, examined.

"The last paper having concluded the observations, which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

The first question that offers itself is, whether the general form and aspect of the government is strictly republican? It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

On comparing the constitution planned by the convention, with the standard here fixed, we perceive at once, that it is, in the most rigid sense, conformable

to it. The house of representatives, like that of one branch at least of all the state legislatures, is elected immediately by the great body of the people. The senate, like the present congress, and the senate of Maryland, derives its appointment indirectly from the people. The president is indirectly derived from the choice of the people, according to the example in most of the states. Even the judges with all other officers of the union, will, as in the several states, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard, and to the model of the state constitutions.

". . . But it was not sufficient, say the adversaries of the proposed constitution, for the convention to adhere to the republican form. They ought, with equal care, to have preserved the federal form, which regards the union as a *confederacy* of sovereign states; instead of which, they have framed a *national* government, which regards the union as a *consolidation* of the states. And it is asked, by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

"Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain **the real character of the government in question. . . .**

"First. In order to ascertain **the real character** of the government, it may be considered in relation to the **foundation** on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to **the authority by which future changes** in the government are to be introduced.

"On examining the first relation, it appears, on one hand, that the constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, that **this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent states** to which they respectively belong. It is to be **the assent and ratification of the several states, derived from the supreme authority in each state—the authority of the people themselves. The act, therefore, establishing the constitution,** will not be a *national*, but a **federal** act.

"That it will be a **federal,** and not a **national** act, as these terms are understood by the objectors, the act of the people, as forming so many independent states, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a *majority* of the people of the union, nor from that of a *majority* of the states. It must result from the *unanimous* assent of the several states that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority; in the same manner as the majority in each state must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the states, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. **Each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act.** In this relation, then, the new constitution will, if established, be a *federal*, and not a *national* constitution.

"The next relation is, to the sources from which the ordinary powers of government are to be derived. The house of representatives will derive its powers

from the people of America, and the people will be represented in the same proportion, and on the same principle, as they are in a legislature of a particular state. So far the government is *national*, not *federal*. The senate, on the other hand, will derive its powers from the states, as political and coequal societies; and these will be represented on the principle of equality in the senate, as they now are in the existing congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the president is to be made by the states in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies; partly as unequal members of the same society. The eventual election, again, is to be made by the branch of the legislature which consists of the national representatives; but in this particular act, they are to be thrown into the form of individual delegations, from so many distinct and coequal bodies politic. From this aspect of the government, it appears to be of a mixed character, presenting at least as many *federal* as *national* features.

"The difference between a federal and national government, as it relates to the *operation of the government*, is, by the adversaries of the plan of the convention, supposed to consist in this, that in the former, the powers operate on the political bodies composing the confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the constitution by this criterion, it falls under the *national*, not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which states may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual capacities, in its ordinary and most essential proceedings, will, on the whole, in the sense of its opponents, designate it, in this relation, a *national* government.

"But if the government be national, with regard to the *operation* of its powers, it changes its aspect again, when we contemplate it in relation to the *extent* of its powers. The idea of a national government involves in it not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. **Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general, and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject within their respective spheres, to the general authority, than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several states a residuary and inviolable sovereignty** [i. e. government] **over all other objects.** It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local governments; or, to speak

more properly, that it could be safely established under the first alone, is a position not likely to be combated.

"If we try the constitution by its last relation, to the authority by which amendments are to be made, we find it neither wholly *national*, nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal on the other hand, the concurrence of each state in the union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention, is not founded on either of these principles. In requiring more than a majority, and particularly, in computing the proportion by *states*, not by *citizens*, it departs from the *national*, and advances towards the *federal* character. In rendering the concurrence of less than the whole number of states sufficient, it loses again the *federal*, and partakes of the *national* character.

"The proposed constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal constitution; but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal, and partly national; in the operation of these powers, it is national, not federal; in the extent of them again, it is federal, not national; and finally in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national."

Number XL.

[Madison.]

"Will it be said, that the *fundamental principles* of the confederation were not within the purview of the convention, and ought not to have been varied? I ask, what are these principles? Do they require, that in the establishment of the constitution, the states should be regarded as **distinct and independent sovereigns**? They are so regarded by the constitution proposed. . . ."

Number XLII.

[Madison.]

". . . The provision of the **federal articles** on the subject of piracy, extends no further than to the establishment of courts for the trial of these offences. . . .

The necessity of a superintending authority over the reciprocal trade of **confederated states** has been illustrated by other examples as well as our own. . . ."

Number XLV.

[Madison.]

"The number of individuals employed under the constitution of the United States, will be much smaller than the number employed under the particular states. There will consequently be less of personal influence on the side of the former than of the latter. The members of the legislative, executive, and judiciary departments of thirteen and more states; the justices of peace, officers of militia, ministerial officers of justice, with all the county, corpora-

tion, and town officers, for three millions and more of people, intermixed, and having particular acquaintance with every class and circle of people, must exceed beyond all proportion, both in number and influence, those of every description who will be employed in the administration of **the federal system**. . . .

"It is true that **the confederacy** is to possess, and may exercise the power of collecting internal as well as external taxes throughout the states: but it is probable that this power will not be resorted to, except for supplemental purposes of revenue. . . .

"The powers delegated by the proposed constitution to **the federal government**, are few and defined. Those which are to remain in the state governments, are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation, will for the most part, be connected. The powers reserved to the several states will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the state. . . .

"If the new constitution be examined with accuracy and candour, it will be found that the change which it proposes, consists much less in the addition of NEW POWERS to the union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing congress by the articles of confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them. The change relating to taxation, may be regarded as the most important: and yet **the present congress** have as complete authority to REQUIRE of the states indefinite supplies of money for the common defence and general welfare, as **the future congress** will have to require them of individual citizens; and the latter will be no more bound than the states themselves have been, to pay the quotas respectively taxed on them. . . ."

NUMBER XLVI.

[Madison.]

"**The federal and state governments are in fact but different agents and trustees of the people**, instituted with different powers, and designated for different purposes. The adversaries of the constitution seem to have **lost sight of the people** altogether, in their reasonings on this subject; and to have viewed **these different establishments**, not only as mutual **rivals and enemies**, but as uncontrolled by any **common superior**, in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their error. They must be told, that **the ultimate authority**, wherever the derivative may be found, **resides in the people alone**; . . ."

NUMBER LIV.

[Hamilton.]

"It is not probable, that the richest **state in the confederacy**, will ever influence the choice of a single representative, in any other state. Nor will the representatives of the larger and richer states, possess any other advantage in

the federal legislature, over the representatives of other states, than what may result from their superior number alone; as far, therefore, as their superior wealth and weight may justly entitle them to any advantage, it ought to be secured to them by a superior share of representation. The new constitution is, in this respect, materially different from the existing confederation, as well as from that of the United Netherlands, and other similar confederacies. In each of the latter, the efficacy of the federal resolutions, depends on the subsequent and voluntary resolutions of the states composing the union. Hence the states, though possessing an equal vote in the public councils, have an unequal influence, corresponding with the unequal importance of these subsequent and voluntary resolutions. **Under the proposed constitution, the federal acts** will take effect without the necessary intervention of the individual states. They will depend merely on the majority of votes in the **federal** legislature, and consequently each vote, whether proceeding from a larger or smaller state, or a state more or less wealthy or powerful, will have an equal weight and efficacy."

Number LXXX.

[Hamilton.]

"To judge with accuracy of the due extent of the federal judicature, it will be necessary to consider in the first place what are its proper objects.

"It seems scarcely to admit of controversy, that the judiciary authority of the union ought to extend to these several descriptions of cases: 1st. To all those which arise out of the laws of the united states, passed in pursuance of their just and constitutional powers of legislation; 2nd. To all those which concern the execution of the provisions expressly contained in **the articles of union**; 3d. To all those in which the united states are a party; 4th. To all those which involve the PEACE of the CONFEDERACY, whether they relate to the intercourse between the united states and foreign nations, or to that between the states themselves; 5th. To all those which originate on the high seas, and are of admiralty or maritime jurisdiction; and lastly to all those in which the state tribunals cannot be supposed to be impartial and unbiassed. . . ."

Number LXXXV.

[Hamilton.]

"I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies, must necessarily be a compound as well of the errors and prejudices, as of the good sense and wisdom of the individuals of whom they are composed. **The compacts which are to embrace thirteen distinct states, in a common bond of amity and union,** must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials? . . .

"Every constitution for the United States must inevitably consist of a great variety of particulars, in which **thirteen independent states are to be accommodated in their interests or opinions of interest.** We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form the majority on one question, may become the minority on a second, and, an association dissimilar to either, may constitute the majority on a third. Hence **the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact. . . .**"

APPENDIX E.

No 1.

DECLARATIONS, BILLS OF RIGHTS &c. INCLUDING THE DECLARATION OF INDEPENDENCE.

As — in the great argument between federalization and nationalization — a misuse is made of the Declaration of Independence I beg leave to present with it some of its antecedents, especially the acts of some of the nascent states, which authorized their delegations in congress to make for them the said declaration, while reserving to themselves absolutely *the entire subject of establishing government.* All the people were distinct states, and they associated as such, in declaring and achieving independence; and they afterwards acted as such in confederating, and all their acts and declarations, without exception, are on the basis of voluntary union and co-operation of "free sovereign and independent states."

PROCLAMATION OF MASSACHUSETTS Jan'y 22, 1776.

By the great and general Court of the colony of Massachusetts Bay: A PROCLAMATION —— The frailty of human nature, the wants of individuals, and the numerous dangers which surround them through the course of life, have, in all ages and in every country, impelled them to form societies and establish governments.

As the happiness of the people is the sole end of government, so the consent of the people is the only foundation of it, in reason, morality, and the natural fitness of things. And therefore every act of government, every exercise of sovereignty against or without the consent of the people, is injustice, usurpation and tyranny.

It is a maxim that in every government there must exist somewhere a supreme, sovereign, absolute and uncontrollable power; but this power resides always in the body of the people, and it never was or can be delegated to one man or a few; the great Creator having never given to men a right to vest others with authority over them, unlimited either in duration or degree.

When kings, ministers, governors, or legislators, therefore, instead of exercising the powers entrusted with them, according to the principles forms and proportions stated by the constitution, and established by the original compact prostitute those powers to the purposes of oppression; to subvert instead of supporting a free constitution; — to destroy instead of preserving the lives, liberties and properties of the people; — they are no longer to be deemed magistrates, vested with a sacred character, but become public enemies and ought to be resisted.

The administration of Great Britain, despising equally the justice humanity and magnanimity of their ancestors, and the rights, liberties, and courage of AMERICANS, have, for a course of years, labored to establish a sovereignty in America, not founded on the consent of the people, but in the mere will of persons a thousand leagues from us, whom we know not; and have endeavored to establish this sovereignty against our consent in all cases whatsoever.

The colonies during this period, have recurred to every peaceable resource in a free constitution, by petitions and remonstrances, to obtain justice, which has been not only denied to them, but they have been treated with unexampled indignity and contempt; and at length open war of the most atrocious cruel and sanguinary kind has been commenced against them. To this an open, manly and successful resistance has hitherto been made; thirteen colonies are now firmly united in the conduct of this most just and necessary war, under the wise councils of their congress.

It is the Will of Providence, for wise, righteous and gracious Ends, that this Colony should have been singled out by the Enemies of America, as the first Object, both of their Envy and their Revenge; and after having been made the Subject of Several merciless and vindictive Statutes, one of which was intended to subvert our Constitution by Charter, is made the Seat of War.

No effectual Resistance to the System of Tyranny prepared for us, could be made without either instant Recourse to Arms or a temporary Suspension of the ordinary Powers of Government, and Tribunals of Justice; to the last of which Evils, in hopes of a Speedy Reconciliation with Great Britain, upon equitable Terms, the Congress advised us to Submit; and Mankind has seen a Phenomenon without Example in the political World, a large and populous Colony Subsisting in great Decency and Order, for more than a Year under such a Suspension of Government.

But as our Enemies have proceeded to such barbarous Extremities, commencing Hostilities upon the good People of this Colony, and with unprecedented Malice exerting their Power to Spread the Calamities of Fire, Sword and Famine through the Land, and no reasonable Prospect remains of a Speedy Reconciliation with Great Britain, the Congress have resolved "That no Obedience being due to the Act of Parliament for altering the Charter of the Colony of Massachusetts Bay, nor to a Governor or Lieutenant Governor who will not observe the Directions of, but endeavor to Subvert that Charter, the Governor and Lieutenant Governor of that Colony are to be considered as Absent and their Offices vacant; and as there is no Council there, and Inconveniences arising from the Suspension of the Powers of Government are intolerable, especially at a time when General Gage hath actually levied War and is carrying on Hostilities against his Majesty's peaceable and loyal subjects of that Colony; that, in order to conform as near as may be to the Spirit and Substance of the Charter, it be recommended to the Provincial Convention to write Letters to the Inhabitants of the Several Places which are intituled to Representation in Assembly, requesting them to chuse such Representatives, and that the Assembly when chosen, do elect Councillors; and that such Assembly and Council exercise the Powers of Government, untill a Governor of his Majesty's Appointment will consent to govern the Colony, according to its Charter."

In Pursuance of which Advice, the good People of this Colony have chosen a full and free Representation of themselves, who, being convened in Assembly have elected a Council, who as the executive Branch of Government have constituted necessary Officers through the Colony. The present Generation, therefore, may be congratulated on the Acquisition of a Form of Government, more immediately in all its Branches under the Influence and Control of the People, and therefore more free and happy than was enjoyed by their Ancestors; But as a Government so popular can be supported only by universal

Knowledge and Virtue, in the Body of the People, it is the Duty of all Ranks to promote the Means of Education for the rising Generation, as well as true Religion, Purity of Manners, and Integrity of Life among all orders and Degrees.

As an Army has become necessary for our Defence and in all free States the civil must provide for and controul the military Power, the Major Part of the Council have appointed Magistrates and Courts of Justice in every County, whose Happiness is so connected with that of the People that it is difficult to Suppose they can abuse their Trust. The Business of it is to see those Laws inforced which are necessary for the Preservation of Peace, Virtue and good Order, and the great and general Court expects and requires that all necessary Support and Assistance be given and all proper Obedience yielded to them, and will deem every Person who shall fail of his Duty in this Respect towards them, a disturber of the Peace of this Colony and deserving of exemplary Punishment. . . .

In Council January 19, 1776.

Ordered that the foregoing proclamation be read at the Opening of Every Superior Court of Judicature &c and Inferiour Court of Common Pleas and Court of General Sessions for the Peace within this Colony by their Respective Clerks, and at the Annual Townmeetings in March in each Town; and it is hereby Recommended to the several Ministers of the Gospel throughout this Colony to Read the Same in their Respective Assemblys on the Lords Day next after their Receiving it immediately after the Divine Service.

Consented to —

W. Sever
Walter Spooner
Caleb Cushing
J Winthrop
S Cushing
John Whitcomb
Jed^{h} Foster
Eldad Taylor
Moses Gill
M. Farley
Sam^{l} Hotten
Cha. Chauncy
J. Palmer
John Taylor
B. White
James Prescott

Sent down for Concurrence
PEREZ MORTON
Dpy Secry

In the House of Representatives January 22^{d} 1776
Read and Concurred.
WILLIAM COOPER *Speak^{r} Pro Tem^{r}*

Note. — The foregoing copied from Mass Archives, Vol. CXXXVIII. pp 281-284.

RESOLUTIONS OF VIRGINIA

May 15th 1776.

In the Virginia Convention — present 112 *members.*

Wednesday May 15th 1776.

. . . Resolved unanimously, That the delegates appointed to represent this colony in the general Congress, be instructed to propose to that respectable body to declare the united Colonies free and independent states, absolved from all allegiance to or dependence upon the crown or parliament of Great Britain, and that they give the assent of this Colony to such declaration and to whatever measures may be thought proper and necessary by the Congress for forming foreign alliances and a confederation of the colonies, at such time

and in the manner as to them shall seem best Provided that the power of forming government for and the regulation of the internal concerns of each colony, be left to the respective colonial legislatures.

RESOLVED UNANIMOUSLY, That a committee be appointed to prepare A DECLARATION OF RIGHTS and such a plan of government as will be most likely to maintain peace and order in this colony, and secure substantial and equal liberty to the people.

EDMUND PENDLETON *President.*

It is recorded by Jefferson [his Works, Vol. I. p. 10, also I. Ell. Deb. 56] that "in Congress June 7, 1776," on the above basis, "the delegates of VIRGINIA, moved, in obedience to instructions from their constituents, that the congress should declare that these united colonies are, and of right ought to be, free and independent states . . . [and] that a confederation be formed to bind the colonies more closely together."

On June 25, 1776, congress recorded receipt of the declaration of the deputies of PENNSYLVANIA, met in provincial conference, that they were willing to concur in a vote of congress, declaring the united colonies free and independent states. [See p. 277 *supra*.]

On June 28, it is recorded that Francis Hopkinson and other delegates were instructed by NEW JERSEY as follows: "If you shall judge it necessary or expedient for this purpose, we empower you to join in declaring the united colonies independent of Great Britain, entering into a confederation for union and common defence.

The position and views of NEW YORK on this great subject, precisely quadrate with the theory hereof, and are to be found on p. 336 *supra*.

MARYLAND, June 28, "authorized and empowered" her deputies in congress to "concur in declaring the united colonies free and independent states; in forming such further compact and confederation between them," etc.

Ultimately *thirteen independent wills* became "*unanimous*" on the great subject; but on June 11 it was found that several colonies "were not yet matured for falling from the parent stem, but that they were fast advancing to that state;" so the subject was postponed to July 1, and Jefferson, Adams, Franklin, Sherman, and Livingston were appointed a committee to prepare a declaration in the meanwhile.

July 2, 1776, Congress agreed to the following resolution: —

"*Resolved* That these united colonies are, and, of right, ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be totally dissolved."

July 4, 1776, the Declaration of Independence was agreed to, and probably the first signatures were affixed, though I believe it was a month before all the deputies signed.

The following is the instrument as reported by the above-named committee, and duly signed by the deputies from the different states. The baseless or perverted ideas concerning this immortal manifesto will be appreciated by noting the following facts: —

1. The declarants were nascent states in congress, — these being the people in their only form and capacity for political action, represented as bodies in congress by their deputies.

2. "*Unanimous*" means that the thirteen independent and equal minds were of *one mind* in said declaration.

3. Each mind or will, as shown by the resolutions or instructions, was considered as giving the only authority the said Congress had to make the said declaration. It was a revolutionary body, with large discretion, *ex necessitate*; but the States themselves were, as societies of people, the revolutionists.

4. These bodies *willed* to act together. Such coaction was entirely voluntary. And, when they formulated their government, they declared and pledged the faith of all to each, that each was sovereign, and that no powers whatever were out of her and in Congress, but such as were delegated or intrusted by the state they belonged to.

5. The word "united" is written with a small *u*, showing that it was used in the well-known sense of an adjective or describing word, qualifying states or societies of people, — commonwealths. Fifteen or twenty years ago several able men agreed with me as to the significancy of this fact, and within the last two or three years Prof. Von Holst told me he regarded it as very important in the controversy.

6. The Declaration could have had nothing to do with the formation of either society or government, for societies were fully formed and complete for action, before it was made; and *they proceeded* afterwards — acting through their home governments, already independently formed — *to create* a federal one, by articles of union.

7. And, finally, it does not profess to touch the subject either of society-forming or government-forming, but simply declares principles, and reasons for sundering British ties, and winds up by declaring them sundered.

IN CONGRESS, JULY 4, 1776.

The unanimous declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. —— We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable Rights; that among these are Life, Liberty, and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. —— He has refused his Assent to Laws, the most wholesome and necessary for the public good. —— He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent

should be obtained; and when so suspended he has utterly neglected to attend to them. —— He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. —— He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures. —— He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the People. —— He has refused for a long time, after such dissolution, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within. —— He has endeavoured to prevent the Population of these States; for that purpose obstructing the Law for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands. —— He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers. —— He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. —— He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our People, and eat out their substance —— He has kept among us in times of peace, Standing Armies without the Consent of our legislatures. —— He has affected to render the Military independent of and superior to the Civil Power. —— He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: — For Quartering large bodies of armed troops among us: — For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States: — For cutting off our Trade with all parts of the world: — For imposing Taxes on us without our Consent: — For depriving us in many cases, of the benefits of Trial by Jury: — For transporting us beyond Seas to be tried for pretended offences: — For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies. —— For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments: — For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever. — He has abdicated Government here, by declaring us out of his Protection and waging War against us. —— He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people. —— He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. —— He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands. —— He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. Nor have We been wanting

in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, Establish Commerce, and to do all other Acts and Things which Independent States may of right do. —— And for the support of this Declaration, with a firm reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Richard Henry Lee.
Abra. Clark.
John Penn.
John Adams.
Robt. Treat Paine.
Elbridge Gerry.
Step. Hopkins.
William Ellery.
Roger Sherman.
Saml. Huntington.
Wm. Williams.
Oliver Wolcott.
Matthew Thornton.
Wm. Hooper.
Joseph Hewes.
Wm. Floyd.
Phil. Livingston.
Frans. Lewis.
Lewis Morris.
John Hart.
Th. Jefferson.
Benj. Harrison.
Thos. Nelson, Jr.
Francis Lightfoot Lee.
Carter Braxton.
Button Gwinnett.
Lyman Hall.
Thos. Hayward, Jun.
Thomas Lynch, Jun.
Arthur Middleton.
John Hancock.
Edward Rutledge.
George Wythe.
Robt. Morris.
Benjamin Rush.
Benj. Franklin.
John Morton.
Geo. Clymer.
Jas. Smith.
Geo. Taylor.
James Wilson.
Geo. Ross.
Cæsar Rodney.
Geo. Read.
Tho. M'Kean.
Geo. Walton.
Wm. Whipple.
Saml. Adams.
Josiah Bartlett.
Rich. Stockton.
Jno. Witherspoon.
Fras. Hopkinson.
Samuel Chase.
Wm. Paca.
Thos. Stone.
Charles Carroll of Carrollton.

[L. S.]

Washington, D. C., January 28th, 1874.

I certify that the foregoing copy is a fac-simile of the original Declaration of Independence now on deposit in the United States Patent Office at Washington, D C.

C. Delano, *Secretary of the Interior.*

No. 2.

BILLS OF RIGHTS OR INSTITUTES OF FREEDOM.

This appendix presents those sacred institutes of freedom, called "Bills of Rights," which are really in the character of *protests* by the people, when forming government, concerning those natural and God-given rights which *they keep out of constitutions and above government;* and which, therefore, *no ruler has the right to control or even touch.*

Beside the Virginia "Bill of Rights," of 1776,—the first declared in America—now to be given, and the preamble and declaration of rights in the constitution of Massachusetts, which follow the Virginia one,—the student should read the English "*Magna Charta*," "Petition of Right," and "Bill of Rights," keeping it in mind that, in our case, these are DECLARATIONS BY THE PEOPLE of their sovereign rights over, and governing, their rulers; while the English declarations are THE GRANTS BY KINGS OF PRIVILEGES to their subjects.

VIRGINIA BILL OF RIGHTS.

When, on the 15th of May, 1776, the Convention of Virginia instructed their delegates in Congress to propose to that body to declare the United Colonies free and independent States, it, at the same time, appointed a committee to prepare a declaration of rights and such a plan of government as would be most likely to maintain peace and order in the colony, and secure substantial and equal liberty to the people. On subsequent days the committee was enlarged; Mr. George Mason was added to it on the 18th. The declaration of rights was, on the 27th, reported by Mr. Archibald Cary, the chairman of the committee, and, after being twice read, was ordered to be printed for the perusal of members. It was considered in committee of the whole on the 29th of May, and the 3d, 4th, 5th, and 10th of June. It was then reported to the house with amendments. On the 11th, the convention considered the amendments, and having agreed thereto, ordered that the declaration [with the amendments] be fairly transcribed and read a third time. This having been done on the 12th, the declaration was then read a third time and passed *nem. con.* A manuscript copy of the first draft of the declaration, just as it was drawn by Mr. Mason,[1] is in the library of Virginia. The declaration as it passed is as follows:

A Declaration of Rights made by the Representatives of the good people of VIRGINIA, assembled in full and free Convention, which rights do pertain to them and their posterity as the basis and foundation of government.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best, which is capable of producing

[1] Va. Hist. Reg., Jan., 1849, p. 29.

the greatest degree of happiness and liberty, and is most effectually secured against the danger of mal-administration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasable right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendable, neither ought the offices of magistrate, legislator, or judge to be hereditary.

5. That the legislative and executive powers of the state should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should at fixed periods be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members to be again eligible, or ineligible, as the laws shall direct.

6. That election of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial Jury of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man can be deprived of his liberty, except by the law of the land, or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the press is one of the greatest bulwarks of liberty, and can never be restrained but by despotic governments.

13. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of *Virginia*, ought to be erected or established within the limits thereof.

15. That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, frugality and virtue, and by a frequent recurrence to fundamental principles.

16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

MASSACHUSETTS BILL OF RIGHTS.

CONSTITUTION OF MASSACHUSETTS.

A constitution, or frame of government, agreed upon by the delegates of the people of Massachusetts Bay, in convention, begun and held at Cambridge, on the first of September, 1779, and continued, by adjournment, to the second of March, 1780.

PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic; to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life; and, whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may at all times find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into **an original, explicit, and solemn compact with each other**; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring his direction in so interesting a design — do agree upon, ordain, and establish, the following declaration of rights and frame of government, as the constitution of the commonwealth of Massachusetts.

PART I.

A DECLARATION OF THE RIGHTS

of the Inhabitants of the Commonwealth of Massachusetts.

Article 1. All men are born free and equal, and have certain natural, essential, unalienable rights, among which may be named the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness.

2. It is the right, as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the Great Creator and Preserver of the Universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and seasons most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he does not disturb the public peace, or obstruct others in their religious worship.

3. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot generally be diffused throughout the community, but by the institution of a public worship of God, and of public institutions in piety, religion, and morality; therefore to promote their happiness, and to secure the good order of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require the several towns, parishes, and precincts, and other bodies politic, or religious societies, to make suitable provision at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion, and morality in all cases, where such provision shall not be made voluntarily.

All the people of the commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the public teachers, as aforesaid, at stated times and seasons, if there be any one whose instructions they can conscientiously and conveniently attend:

Provided, notwithstanding, the several towns, parishes, precincts, and other bodies politic or religious societies, shall at all times have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

All moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law; and no subordination of any sect or denomination to another shall ever be established by law.

4 **The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent state**; and do and for ever hereafter shall exercise and enjoy every power, jurisdiction and right which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.

5. **All power residing originally in the people, and being derived from them, the several magistrates and officers of government** vested with authority, whether legislative, executive or judicial, **are their substitutes and agents**, and are at all times accountable to them.

6. No man, or corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from services rendered to the public. And this title being in nature neither hereditary nor transmissible to children, or descendants, or relations of blood, the idea of a man born a magistrate, lawgiver or judge is absurd and unnatural.

7. **Government is instituted for the common good, for the protection, safety, prosperity and happiness of the people**, and not for the

profit, honor or private interest of any one man, family, or any one class of men. Therefore **the people alone have an incontestible, unalienable and indefeasible right to institute government, and to reform, alter or totally change the same** when their protection, safety, prosperity and happiness require it.

8. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by the frame of government, to cause their public officers to return to private life, and to fill up vacant places by certain and regular elections and appointments.

9. All elections ought to be free, and all the inhabitants of this commonwealth having such qualifications as they shall establish by their frame of government, have an equal right to elect officers and to be elected for public employments.

10. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property according to the standing laws. He is obliged, consequently, to contribute his share to the expense of this protection, to give his personal services, or an equivalent, when necessary. But no part of the property of any individual can with justice be taken from him, or applied to the public use, without his own consent or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

11. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely and without being obliged to purchase it, completely and without any denial, promptly and without delay, conformably to the laws.

12. No person shall be held to answer for any crime or offence until the same is fully and plainly, substantially and formally described to him; or be compelled to accuse or furnish evidence against himself. And every person shall have a right to produce all proofs that may be favorable to him, to meet the witnesses against him face to face, and be fully heard in his defence, by himself or counsel, at his election. And no person shall be arrested, imprisoned, or despoiled or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty or estate but by the judgment of his peers or the law of the land.

And the legislature shall not make any law that shall subject any person to a capital or infamous punishment (excepting for the government of the army and navy) without trial by jury.

13. In criminal prosecutions the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of the citizen.

14. Every person has a right to be secure from all unreasonable searches of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right if the cause or foundation of them be not previously supported by oath or affirmation: and if the order in a warrant to a civil officer to make search in all suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a specific designation of the person or object of search, arrest or seizure.

And no warrant ought to be issued but in such cases and with the formalities prescribed by the laws.

15. In all controversies concerning property, and in all suits between two or

more persons (except in cases in which it has heretofore been otherwise used and practised), the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless in cases arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

16. The liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this commonwealth.

17. The people have a right to keep and bear arms for their common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without consent of the legislature; and the military power shall always be held in exact subordination to the civil authority, and be governed by it.

18. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles in the choice of their officers and representatives; and they have a right to require of their lawgivers and magistrates an exact and constant observance of them in the formation and execution of all laws necessary for the good administration of the commonwealth.

19. The people have a right in an orderly and peaceable manner to assemble to consult on the common good, give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions or remonstrances, redress of the wrongs done them and of the grievances they suffer.

20. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

21. The freedom of deliberation, speech and debate in either house of the legislature is so essential to the rights of the people that it cannot be the foundation of any accusation or prosecution, action or complaint in any other court or place whatever.

22. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws, and for making new laws, as the common good may require.

23. No subsidy, charge, tax, impost or duties ought to be established, fixed, laid or levied under any pretext whatever, without the consent of the people or their representatives in the legislature.

24. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive and inconsistent with the fundamental principles of a free government.

25. No person ought in any case or in any time to be declared guilty of treason or felony by the legislature.

26. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

27. In time of peace no soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made but by the civil magistrate in manner ordained by the legislature.

28. No person can in any case be subjected to law martial, or to any penalties or pains of that law (except those employed in the army or navy, and except the militia in actual service), but by the authority of the legislature.

29. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity

will admit. It is therefore, not only the best policy, but for the security of the rights of the people and of every citizen, that the judges of the supreme judicial courts should hold their offices as long as they behave themselves well, and that they should have honorable salaries, ascertained and established by standing laws.

30. In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws, and not of men.

PART II.

FRAME OF GOVERNMENT.

The people inhabiting the territory formerly called the province of Massachusetts Bay **do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign and independent body politic or state, by the name of The Commonwealth of Massachusetts.**

[Here follows the constitution of the government.]

THE TENTH AMENDMENT.

There was much clamor against the federal constitution when it was under discussion, because it did not contain a bill of rights. It was replied that all rights and powers remained in the people, *except* those actually expressed in the constitution; and that a bill of rights was therefore an absurdity; and besides, that it was dangerous, in implying that all rights *not expressed as kept out*, might in future be *assumed to be in* the constitution.

But the clamor went on, and in the Massachusetts convention, to escape defeat, the friends proposed to recommend an amendment declaring what every advocate said was the case anyhow, viz. that ALL POWERS NOT DELEGATED ARE RESERVED. When Gov. Hancock made this "conciliatory proposition," Samuel Adams turned to be an advocate, saying it was "equivalent to a summary of a bill of rights," and meant precisely what the second article of the first federal constitution did, viz., that **"each state retained her sovereignty, and every power and right not expressly delegated to the united states in congress assembled."** And he wrote to Gerry and Lee in congress, to urge the adoption of the said amendment, so that the people should see clearly "the distinction between *the powers delegated* to congress, and *the sovereign authority* of the several states, which is the palladium of the rights of the people."

The different forms in which the states proposed the prospective tenth amendment are here given, because the perverters say it means that the nation *reserved to the states* such powers as it chose, reserving all others to the state governments or to itself — the people.

This idea will be found ridiculous when the different forms as proposed by the states are presented, showing what they meant and thought they were proposing.

The form used by MASSACHUSETTS was as follows: "All powers not expressly delegated by the aforesaid constitution are reserved by the several states, to be by them exercised." [II. Ell. Deb. 197.]

South Carolina's version: "The states retain every power not expressly relinquished by them, and vested in the general government of the union. [I. Ell. Deb. 325.]

General C. C. Pinckney said: "It is admitted by all that the rights not expressed were reserved by the several states." [IV. Ibid. 286.]

Maryland's version is, that "congress shall exercise no power but what is expressly delegated by this constitution." [II. Ibid. 550.]

North Carolina expressed it thus: "That each state in the union shall respectively retain every power, jurisdiction, and right, which is not by this constitution delegated to the congress of the united states, or to the departments of the general government. Nor shall the said congress, nor any department of the said government, exercise any act of authority over any individual in any of the said states, but such as can be justified under some *power particularly given* in this constitution; but the said constitution shall be considered at all times a solemn instrument defining the extent of their authority, and defining the limits which they cannot rightfully in any instance exceed." [IV. Ibid. 249; Va. Gaz. Sept. 4, 1788.]

New Hampshire's expression reads thus: "All powers not expressly and particularly delegated by the aforesaid constitution, are reserved by the several states to be by them exercised." [I. Ell. Deb. 326.]

New York's version was put thus: "That every power, jurisdiction, and right, which is not by the said constitution clearly delegated to the congress of the united states, remains to the people of the several states, or to their respective state governments, to whom they may have granted the same." [I. Ibid. 327.]

Rhode Island wanted the following amendment: "The united states shall guarantee to each state its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this constitution expressly delegated to the united states."

APPENDIX F.

WEBSTER'S REAL CONSTITUTIONAL VIEWS.

SEVEN years after Webster had been elected to Congress from New Hampshire, and when he was in the full maturity of years and intellect, he, as a statesman, was called upon by one of the most enlightened communities of America, for his best considered counsel on that momentous subject — then agitating the whole country — the admission of Missouri into the union of states, with or without conditions. The following document contains his most deliberate views: —

The italics are in the text except what contains the following points of Webster's doctrine: —

1. That "*the only parties to the constitution*" '*contemplated originally*' were "*the 13 confederated states.*"
2. That its provisions "*rest on compact and plighted faith.*"
3. That *all new states must come in by compact.*
4. That our union is "*the American confederacy.*"

A MEMORIAL

TO THE

CONGRESS OF THE UNITED STATES,

ON THE

Subject of Restraining the Increase of Slavery in New States,

TO BE ADMITTED INTO THE UNION.

Prepared in pursuance of a vote of the inhabitants of Boston and its vicinity, assembled at the State House, on the third day of December, A. D., 1819.

BOSTON:

SEWELL PHELPS, PRINTER, No. 5 COURT STREET.

1819.

The Committee appointed by a vote of the meeting holden in the State House, on the 3d instant, to prepare a memorial to Congress, on the subject of the prohibition of Slavery in the New States, submit the following:

DANIEL WEBSTER,
GEORGE BLAKE,
JOSIAH QUINCY,
JAMES T. AUSTIN.
JOHN GALLISON.

BOSTON, December 15, 1819.

MEMORIAL.

To the Senate and House of Representatives of the United States, in Congress assembled:

The undersigned, inhabitants of Boston and its vicinity, beg leave most respectfully and humbly to represent; That the question of the introduction of Slavery into the New States, to be formed on the west side of the Mississippi River, appears to them to be a question of the last importance to the future welfare of the United States. If the progress of this great evil is ever to be arrested, it seems to the undersigned that this is the time to arrest it. A false step taken now cannot be retraced; and it appears to us that the happiness of unborn millions rests on the measures, which Congress may, on this occasion, adopt. Considering this as no local question, nor a question to be decided by a temporary expediency, but as involving great interests of the whole of the United States, and affecting deeply and essentially those objects of common defence, general welfare, and the perpetuation of the blessings of liberty, for which the Constitution itself was formed, we have presumed in this way, to offer our sentiments and express our wishes to the National Legislature. And as various reasons have been suggested, against prohibiting Slavery in the New States, it may perhaps be permitted to us to state our reasons, both for believing that Congress possesses the Constitutional power to make such prohibition a condition, on the admission of a New State into the Union, and that it is just and proper that they should exercise that power.

And, in the first place, as to the Constitutional authority of Congress. The Constitution of the United States has declared, that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory, or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice the claims of the United States, or of any particular State." It is very well known that the saving in this clause of the claims of any particular State was designed to apply to claims by the then existing States of territory, which was also claimed by the United States as their own property.

It has, therefore, no bearing on the present question. The power, then, of Congress over its own territories is, by the very terms of the Constitution unlimited. It may make all "needful rules and regulations;" which of course include all such regulations as its own views of policy or expediency shall from time to time dictate. If, therefore, in its judgment, it be needful for the benefit of a Territory to enact a prohibition of slavery, it would seem to be as much within its power of legislation, as any other ordinary act of local policy. Its sovereignty being complete and universal, as to the Territory, it may exercise over it the most ample jurisdiction in every respect. It possesses in this view all the authority which any State Legislature possesses over its own Territory: and if a State Legislature may, in its discretion, abolish or prohibit Slavery within its own limits, in virtue of its general legislative authority, for the same reason Congress also may exercise the like authority over its own Territories. And that a State Legislature, unless restrained by some constitutional provision, may so do, is unquestionable, and has been established by general practice.

If then, Congress possess unlimited powers of government over its Territories, it may certainly from time to time vary, control and modify its legislation

as it pleases. The Territories, as such, can have no rights but such as are conferred by Congress; and it is morally bound to adopt such measures as are best calculated to promote the permanent interests and security of these Territories, as well as to secure the future well-being of the Union. Without an enabling act of Congress, no Territory or portion of Territory belonging to the United States can be created into a State, or form a constitution of government, or become discharged of its Territorial obedience; and if Congress may grant to any of its Territories this privilege, it may also most clearly, as it seems to us, in its discretion, refuse it.

It is not obliged to admit it to become a State, if it be not satisfied that such admission will conduce as well to its own good as to the good of the Union. In this respect Congress stands, in relation to its Territories, like a State in relation to any portion of its own Territory, which requests to be separated and formed into a New State. No person has ever doubted that the question as to such separation was a question of expediency, resting in the sound discretion of the State; and that it may not be claimed as matter of right, unless in virtue of some compact, establishing such right. **No person has ever doubted that any State, in acceding to a division of its Territory, and the formation of a New State, has always possessed the right to impose its own terms and conditions as a part of the grant. The ground of this right is the exclusive possession of sovereignty, with which the State is not compellable to part**, and if it does part with it, it may annex all such conditions and rules as it deems fit for its own security and for the permanent good of the citizens of the divided Territory. Such was the case of Virginia, when she acceded to the separation of the District of Kentucky and allowed it to become an independent State. Such is the case of the recent separation of the District of Maine from Massachusetts. In each of these cases a considerable number of fundamental conditions were offered to the Districts as the sole grounds, upon which the separation could be allowed; and not a doubt was ever entertained, that these conditions were within the legitimate exercise and authority of these States. These conditions were accepted by Kentucky, and have been accepted by Maine, and it was never imagined, that they in any respect prevented either from possessing all the proper attributes of State sovereignty. They have never been viewed in any other light than as just restrictions, not upon essential State rights, but upon an unlimited exercise of sovereignty, which may be injurious to rights already vested in the parent State, or its citizens. And if Virginia and Massachusetts may, by virtue of their sovereign rights, impose conditions upon their grants of their own Territorial jurisdiction, for the same reason, it would seem, that the United States may impose any like conditions, according to their own sound discretion. And a construction of this clause of the constitution of the United States, which should inhibit Congress from annexing conditions to the act enabling any Territory to form a State government, because it would impair the sovereignty of the State so formed, would equally affect the like conditions annexed by a State to a like act in favour of a portion of its own Territory. A construction, which would lead to such consequences, cannot be a sound one. It would lead to the most injurious results, and absolve all the New States, which have been admitted into the Union since the year 1791, from conditions, which have been hitherto held to be inviolably binding upon them. It would be also repugnant to the comprehensive language of this clause of the constitution, and to the uniform practice, which has prevailed under it from the earliest period of the formation of New States to the present time. No State has ever admitted a New State to be formed in its own bosom, without annexing conditions, and no act has passed Congress enabling any of its Territories to become States, which has not, in like man-

ner, annexed important fundamental conditions to the act. And if conditions may be annexed, it depends solely upon the wisdom of Congress what such conditions shall be. They may embrace everything not incompatible with the possession of those federal rights, which an admission into the Union confers upon the New State. As to such rights, they must, by the nature of the case, be an implied exception. The remarks that have hitherto been made, have proceeded upon the supposition that Congress are not morally bound, either by the Treaty of Cession or by any compact with the inhabitants, to pass an act for the erection of the New State, without imposing conditions.

These observations, so far, have been confined to the Constitutional authority of Congress flowing directly from the clause which has been mentioned. Here then is the case of an express power given in plain terms; and by another clause of the Constitution, Congress have express authority "to make all laws necessary and proper for carrying that power into execution." But other clauses may well be called in aid of this construction, applicable to all cases whatsoever, in which a New State seeks to be admitted into the Union. **The Constitution provides that "New States may be admitted into the Union." The only parties to the Constitution, contemplated by it originally, were the thirteen confederated States.** It was perceived that the Territory, already included within these States, might be beneficially divided and organized under separate governments, and that the Territories already belonging to the United States might, and in good faith ought, to participate in the privileges of *the federal* Union. It was therefore wisely provided that *Congress, in which all the Old States were represented*, should have authority to admit New States into the Union, whenever in its judgment such an act would be beneficial to the public interests. But it was at the same time provided that no New State should be formed or erected within the jurisdiction of any other State, etc., without the consent of the Legislatures of the *States* concerned, as well as of the *Congress*. It is observable, that the language of the Constitution is, that New States *may* (not *shall*) be admitted into the Union. It is therefore a privilege which Congress may withhold or grant, according to its discretion. If it may give its consent; it may also refuse it, and no New State can have a right to compel Congress to do that, which in its judgment is not fit to be done. If Congress have authority to withhold its consent, it has also authority to give that consent either absolutely, or upon condition; for there is nothing in the Constitution which restricts the manner or the terms of that consent. It is observable, too, that where a New State is to be erected within the limits of an Old State, the consent of the State Legislature is as necessary as that of Congress. Now it will not, we suppose, be contended, that the State Legislature may not grant its consent upon conditions; and if so, Congress must have the same right also, for the consent of the State Legislatures and of Congress is required by the same clause, and the construction which fixes the meaning of "consent" as to the one, must, in order to maintain consistency, fix it as to the other. And here it might be again asked, if the conditions of Virginia, annexed to her consent that Kentucky should become a State, were not binding upon the latter, and upon Congress. It appears to the memorialists perfectly clear, that since Congress has a discretionary authority as to the admission of New States into the Union, it may impose whatever conditions it pleases as terms of that consent; and this clause, alone, which applies as well to New States formed from Old States, as to those formed from the territories of the Union, completely establishes the rights, for which the memorialists contend.

The creation of a New State is, in effect, a compact between Congress and the inhabitants of the proposed State. Congress would not probably claim the

power of compelling the inhabitants of Missouri to form a constitution of their own, and come into the Union as a State. It is as plain, that the inhabitants of that Territory have no right of admission into the Union, as a State, without the consent of Congress. Neither party is bound to form this connection. It can be formed only by the consent of both. What, then, prevents Congress, as one of the stipulating parties, to propose its terms? and if the other party assents to these terms, why do they not effectually bind both parties? Or if the inhabitants of the Territory do not choose to accept the proposed terms, but prefer to remain under a Territorial government, has Congress deprived them of any right, or subjected them to any restraint, which, in its discretion, it had not authority to do? If the admission of New States be not the discretionary exercise of a constitutional power, but, in all cases, an imperative duty, how is it to be performed? If the Constitution means that Congress *shall* admit New States, does it mean that Congress shall do this on every application, and under all circumstances? Or if this construction cannot be admitted, and if it must be conceded that Congress must, in some respects, exercise its discretion, on the admission of New States, how is it to be shown, that that discretion may not be exercised, in regard to this subject, as well as in regard to others?

The Constitution declares, "that the migration or importation of such persons as any of the States, *now existing*, shall think proper to admit, shall not be prohibited by the Congress, prior to the year 1808." It is most manifest that the Constitution does contemplate, in the very terms of this clause, that Congress possess the authority to permit the migration or importation of Slaves; for it limits the exercise of this authority for a specific period of time, leaving it to its full operation ever afterwards. And this power seems necessarily included in the authority which belongs to Congress, "to regulate commerce with foreign nations and *among the several States*." No person has ever doubted that the prohibition of the foreign Slave Trade was completely within the authority of Congress, since the year 1808. And why? Certainly, only because it is embraced in the regulation of *foreign commerce*; and if so, it may for the like reason be prohibited, since that period, between the States. Commerce in Slaves, since the year 1808, being as much subject to the regulation of Congress as any other commerce, if it should see fit to enact that no Slave should ever be sold from one State to another, it is not perceived how its Constitutional right to make such provision could be questioned. It would seem to be too plain to be questioned, that Congress did possess the power, *before* the year 1808, to prohibit the migration or importation of Slaves into its Territories, (and in point of fact it exercised that power) as well as into any *New* States; and that its authority *after* that year, might be as fully exercised to prevent the migration or importation of Slaves into any of the Old States. And if it may prohibit New States from importing Slaves, it may surely, as we humbly submit, make it a condition of the admission of such States into the Union, that they shall never import them. In relation, too, to its own Territories, Congress possess a more extensive authority and may, in various other ways, effect the same object. It might for example make it an express condition of its grants of the soil, that the owners shall never hold Slaves; and thus prevent the possession of Slaves from ever being connected with the ownership of the soil.

As corroborative of the views, which have been already suggested, the memorialists would respectfully call the attention of Congress to the history of the national legislation, under the Confederation as well as under the present Constitution, on this interesting subject. Unless the memorialists greatly mistake, it will demonstrate the sense of the nation at every period of its legislation to have been, that the prohibition of Slavery was no infringement of any just

rights belonging to free States, and was not incompatible with the enjoyment of all the rights and immunities, which an admission into the Union was supposed to confer.

It will be recollected that Congress, by a Resolve of the 10th of October, 1780, declared that the unappropriated lands that might be ceded to the United States, pursuant to a previous recommendation of Congress, should be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which should become members of the federal Union and have the same rights of sovereignty, freedom and independence, as the other States. This language is exceedingly strong, and guarantees to the New States the same rights of sovereignty as the Old States possessed. It was undoubtedly with this Resolve in view, that the Territory northwest of the Ohio was ultimately ceded to the United States by the several States claiming title to it; viz: by Massachusetts, Connecticut, New York and Virginia. New York made a cession on the first of March, 1781, without annexing any conditions; Virginia, on the first of March, 1784, upon certain conditions; and, among others, a condition embracing the substance of the Resolve of the 10th October, 1780. Massachusetts made a cession on the 19th of April, 1785, stating no conditions, but expressly to the uses stated in the Resolve of 1780. And lastly Connecticut made a cession on the 13th of September, 1786, without any condition, but expressly for the common use and benefit of the United States. On the 13th of July, 1787, Congress passed an Ordinance for the government of the Territory so added, which has ever since continued in force, and has formed the basis of the Territorial governments of the United States. This Ordinance was passed by the unanimous voice of all the States present at its passage; viz: Massachusetts, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia. It contains six fundamental articles as a compact between the United States and the inhabitants, who might occupy that Territory, which are introduced by a preamble, declaring them to be "for extending the fundamental principles of civil and religious liberty, which forms the basis whereon these republics, their laws and constitutions, are created; to fix and establish these principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in said Territory; to provide also for the establishment of States and a government therein, and for their admission into a share in the federal councils, on an equal *footing with the original States*, at as early a period as might be consistent with the general interest." The 6th article declares, that "there shall neither be Slavery nor involuntary servitude in the said Territory, otherwise than for the punishment of crimes, whereof the party shall become convicted." It is observable, that no objection occurred to this article, on the ground that it was incompatible with the equal sovereignty, freedom and independence with the original States, to which the New States, to be formed in the ceded Territory, were entitled by the Resolve of the 10th of October, 1780, and by the express reference to that Resolve, in the conditions of some of the cessions. It is observable, also, that by the preamble already recited, to which all the States present acceded, and among these were three of the ceding States, and a majority of the Slave-holding States, it was expressly admitted, that the restrictions of the 6th article would not deprive the New States, upon their admission into the federal councils, of their equal footing with the original States. This is a high, legislative construction, by independent States, acting in their sovereignty capacity, and entitled to the greater weight, because it was a subject of common interest; and to all it could not but be deemed a precedent, which would justly influence the subsequent measures of the general government. Since the adoption of the Constitution, three New States, forming a part of this Territory, viz: Ohio, Indiana, and Illinois have been admit-

ted into the Union. In the acts enabling them to form State governments, and a State Constitution, Congress has, among other very important conditions, made it a fundamental condition, that their constitutions shall contain nothing repugnant to the Ordinance of 1787. These conditions were acceded to by these States, and have ever been deemed obligatory upon them and inviolable; and these States, notwithstanding these conditions, are universally considered as admitted into the Union upon the same footing as the original States, and as possessing, in respect to the Union the same *rights of sovereignty, freedom and independence* as the other States, in the sense, in which those terms are used in the Resolve of 1780. During a period of thirty years, not a doubt has been suggested, that the provisions of this ordinance were perfectly compatible with the implied and express conditions of the cessions of this Territory; and that Congress might justly impose the conditions, which it contains, upon all the States formed within its limits.

In the year 1791, Vermont was admitted into the Union, without any conditions being annexed respecting Slavery. The reason was obvious. It had already formed a constitution, which excluded Slavery; and it may be also asserted, that, looking to its habits and feelings of its population, and the habits and feelings, and constitutional provisions of neighboring States, it was morally impossible that Slavery could be adopted in that State.

Kentucky was admitted into the Union in June, 1792. The State was formed from the State of Virginia, and the latter in granting its consent, imposed certain conditions, which have since been supposed to form a fundamental compact, which neither is at liberty to violate. Congress did not impose any restrictions as to Slavery on its admission, and for reasons which cannot escape the most careless observer. It would have been manifestly unjust, as well as impolitic.

Tennessee was admitted into the Union in June, 1796. It was ceded by North Carolina, more than six years before, as a Territory, upon certain conditions, and among them, that Congress should assume the government of the Territory, and govern it according to the Ordinance of 1787; with a proviso, however, "that no regulation made or to be made by Congress shall tend to emancipate Slaves." In good faith, therefore, Congress could not justly insist upon a prohibition of Slavery upon its admission into the Union.

Mississippi was admitted into the Union in December, 1817, upon conditions that its constitution should contain nothing repugnant to the Ordinance of 1787, so far as the same had been extended to the Territory by the agreement of cession made between the United States and Georgia; and Alabama was authorized to become a State by the act of 2nd of March, 1819, upon a similar condition. Both of these States were ceded as one Territory to the United States by Georgia, in April, 1802, upon condition, among other things, that it should be admitted into the Union in the same manner as the Territory northwest of the Ohio might be under the Ordinance of 1787, "which Ordinance (it is declared) shall extend to the Territory contained in the present act of cession, *that article only excepted, which forbids Slavery.*" The prohibition of Slavery could not, therefore, without the grossest breach of faith, be applied to this Territory. And the very circumstances of this exception in this cession of Georgia, as well as in that of North Carolina, shows strongly the sense of those States that, without such an exception, Congress would possess the authority in question.

The memorialists, after this general survey, would respectfully ask the attention of Congress to the state of the question of the right of Congress to prohibit Slavery in that part of the former Territory of Louisiana, which now forms the Missouri Territory. Louisiana was purchased of France by the Treaty of the 30th of April, 1803. The third article of that Treaty is as fol-

lows: "The inhabitants of the ceded Territory shall be incorporated into the Union of the United States, and admitted as soon as possible, *according to the principles of the federal Constitution,* to the enjoyment of all the *rights, advantages and immunities of citizens of the United States;* and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion, which they profess.

Although the language of this article is not very precise or accurate, the memorialists conceive that its real import and intent cannot be mistaken. The first clause provides for the admission of the ceded Territory into the Union, and the succeeding clause shows this must be *according to the principles of the federal Constitution;* and this very qualification necessarily excludes the idea that Congress were not to be at liberty to impose any conditions upon such admission, which were consistent with the principles of that Constitution, and which had been or might justly be applied to other New States. The language is not by any means so pointed as that of the Resolve of 1780, and yet it has been seen that that Resolve was never supposed to inhibit the authority of Congress, as to the introduction of slavery, and it is clear, upon the plainest rules of construction, that in the absence of all restrictive language, a clause, merely providing for the admission of a Territory into the Union, must be construed to authorize an admission in the manner, and upon the terms, which the Constitution itself would justify. This construction derives additional support from the next clause. The inhabitants "shall be admitted as soon as possible, according to the principles of the federal Constitution, to the enjoyment of all the *rights, advantages and immunities of citizens of the United States.*" The rights, advantages and immunities here spoken of must, from the very force of the terms of the clause, be such as are recognized or communicated by the Constitution of the United States; such as are common to all citizens, and are uniform throughout the United States. The clause cannot be referred to rights, advantages and immunities, derived exclusively from the State governments, for these do not depend upon the federal Constitution. Besides, it would be impossible that all the rights, advantages and immunities of citizens of the different States could be at the same time enjoyed by the same persons. These rights are different in different States; a right exists in one State, which is denied in others, or is repugnant to other rights enjoyed in others. In some of the States, a freeholder alone is entitled to vote in elections; in some, a qualification of personal property is sufficient; and in others age, and freedom are the sole qualifications of electors. In some States no citizen is permitted to hold Slaves; in others, he possesses that power absolutely; in others it is limited. The obvious meaning therefore of the clause is, that the rights derived under the federal Constitution, shall be enjoyed by the inhabitants of Louisiana, in the same manner as by the citizen of other States. The United States, by the Constitution, are bound to guarantee to every State in the Union a republican form of government; and the inhabitants of Louisiana are entitled, when a State, to this guarantee. Each State has a right to two senators, and to representatives according to a certain enumeration of population pointed out in the Constitution. The inhabitants of Louisiana, upon their admission into the Union, are also entitled to these privileges. The Constitution further declares, "that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." It would seem as if the meaning of this clause could not be misinterpreted. It obviously applies to the case of the removal of a citizen of one State to another State; and in such a case it secures to the migrating citizen all the privileges and immunities of citizens in the State to which he removes. It cannot surely be contended, upon any rational interpretation, that it gives to the citizens of each State all the privileges and immunities of the citizens of every other State,

at the same time and under all circumstances. Such a construction would lead to the most extraordinary consequences. It would at once destroy all the fundamental limitations of the State constitutions upon the rights of their own citizens; and leave all those rights at the mercy of the citizens of any other State, which should adopt different limitations. According to this construction, if all the State constitutions, save one, prohibited Slavery, it would be in the power of that single State, by the admission of the right of its citizens to hold Slaves, to communicate the same right to the citizens of all the other States within their own exclusive limits, in defiance of their own constitutional prohibitions; and to render the absurdity still more apparent, the same construction would communicate the most opposite and irreconcilable rights to the citizens of different States at the same time.

It seems therefore to be undeniable, upon any rational interpretation, that this clause of the Constitution communicated no rights in any State, which its own citizens do not enjoy, and that the citizens of Louisiana, upon their admission into the Union, in receiving the benefit of this clause, would not enjoy higher, or more extensive rights than the citizens of Ohio. It would communicate to the former no right of holding Slaves, except in States, where the citizens already possessed the same right under their own State constitutions and laws.

The Treaty, then, by providing for the inhabitants of Louisiana the enjoyment of all the rights, advantages and immunities of citizens of the United States, seems distinctly to have pointed to those derived from the federal Constitution, and not to those, which, being derived from other sources, were enjoyed by some and denied to others of the citizens of the United States.

The remaining clause of the Treaty, "that in the meantime" the inhabitants "shall be maintained and protected in the free enjoyment of their liberty, property, and the religion, which they profess," requires no examination. It manifestly applies to the period of its Territorial government, and has no reference to the terms of its admission into the Union, or to the condition of the Territory after it becomes a State. But it may be confidently asked whether, if the whole Ordinance of 1787, which contains the prohibition of Slavery, had been extended to Louisiana, there would have been anything inconsistent with the enjoyment of liberty, property or religion? So far as Slaves are deemed property, it might be just that the then real owners within the Territory should be secured in the enjoyment of that property; but the permission to acquire such property *in future*, like every other right of property, ought to depend upon sound legislation, and be granted or denied by Congress, as its own judgment should direct. And the memorialists cannot perceive, in the clause of the Treaty, any restriction upon the right of Congress to exercise the utmost freedom of legislation as to the future introduction of Slaves into the ceded territory.

Congress, after this cession, divided the Territory into two Territorial governments; and by an act passed on the 2nd of March, 1805, in the exercise of its legislative discretion, directed that the Orleans Territory (which has since become the State of Louisiana), should be governed by the Ordinance of 1787, excepting as to the descent and distribution of estates, and the article respecting Slavery. By a subsequent act of the 11th of April, 1811, authorizing the inhabitants of this Territory to become a State, Congress annexed several highly important conditions, to the exercise of this high act of sovereignty. Among other conditions it required that the River Mississippi, and the waters thereof, should be highways, and remain forever free to all the inhabitants of the United States and its Territories, without any tax, toll or impost laid by the State therefor; that the constitution should contain the fundamental principles of civil and religious liberty, and should allow the trial by jury in

criminal cases, and the privilege of the writ of habeas corpus; that all the laws, records and judicial proceedings of the State, judicial and legislative, should be in the language, in which the laws of the United States are written; that the people should disclaim all rights to the unappropriated Territory, within the limits of the State, and that the same should be at the disposal of the United States; that the lands sold by the United States should be exempt from taxation for five years from the sale; and that lands of non-residents should not be taxed higher than those of residents. These conditions are certainly very striking limitations of sovereignty, and embrace most of the fundamental regulations of the Ordinance of 1787, excepting the article touching Slavery. It is not known to the memorialists that any doubt of their constitutionality, or of their perfect harmony with the treaty of 1803, was ever entertained, either in Congress or in Louisiana; and yet they contained some principles as repugnant to the original jurisprudence of the Territory at the time of its cession, as could well be devised; and if Congress could then impose such conditions, what reason is there to say, that it may not impose such conditions on the Missouri Territory? and if such conditions, why not any others, which its wisdom, its justice or its policy may dictate?

Upon the whole, the memorialists would most respectfully submit, that the terms of the Constitution, as well as the practice of the governments under it, must, as they humbly conceive, entirely justify the conclusion, that Congress may prohibit the further introduction of Slavery into its own Territories, and also make such prohibitions a condition of the admission of any New State into the Union.

If the Constitutional power of Congress to make the proposed prohibition be satisfactorily shown, the justice and policy of such prohibition seem to the undersigned to be supported by plain and strong reasons. The permission of Slavery in a New State necessarily draws after it an extension of that inequality of representation, which already exists in regard to the original States. It cannot be expected, that those of the original States, which do not hold Slaves, can look on such an extension as being politically just. **As between the original States, the representation rests on compact and plighted faith, and your memorialists have no wish, that that compact should be disturbed, or that plighted faith in the slightest degree violated. But the subject assumes an entirely different character, when a New State proposes to be admitted. With her there is no compact, and no faith plighted; and where is the reason, that she should come into the Union with more than an equal share of political importance and political power?** Already the ratio of representation, established by the Constitution, has given to the States holding Slaves twenty members in the House of Representatives more than they would have been entitled to, except under the particular provision of the Constitution. In all probability this number will be doubled in thirty years. Under these circumstances, we deem it not an unreasonable expectation, that the inhabitants of Missouri should propose to come into the Union, renouncing the right in question, and establishing a constitution, prohibiting it for ever. Without dwelling upon this topic, we have still thought it our duty to present it to the consideration of Congress. We present it with a deep and earnest feeling of its importance, and we respectfully solicit for it the full consideration of the National Legislature.

Your memorialists were not without the hope, that the time had at length arrived, when the inconvenience and the danger of this description of population had become apparent, in all parts of this country, and in all parts of the civilized world. It might have been hoped that the New States themselves would have had such a view of their own permanent interests and prosperity,

as would have led them to prohibit its extension and increase. The wonderful increase and prosperity of the States north of the Ohio is unquestionably to be ascribed in a great measure to the consequences of the Ordinance of 1787; and few, indeed, are the occasions, in the history of nations, in which so much can be done, by a single act, for the benefit of future generations, as was done by this Ordinance of 1787; and as may now be done by the Congress of the United States. We appeal to the justice and the wisdom of the National Councils to prevent the further progress of a great and serious evil: We appeal to those who look forward to the remote consequences of their measures, and who cannot balance a temporary or trifling convenience, if there were such, against a permanent, growing, and desolating evil.

We cannot forbear to remind the two Houses of Congress, that the early and decisive measures adopted by the American Government for the abolition of the Slave Trade are among the proudest memorials of our nation's glory. That Slavery was ever tolerated in the Republic is, as yet, to be attributed to the policy of another government. **No imputation thus far, rests on any portion of the American Confederacy.** The Missouri Territory is a new country. If its extensive and fertile fields shall be opened as a market for Slaves, the Government will seem to become a party to a traffic which, in so many acts, through so many years, it has denounced as unpolitic, unchristian, inhuman. To enact Laws to punish the traffic, and at the same time to tempt cupidity and avarice by the allurements of an insatiable market, is inconsistent and irreconcilable. Government by such a course, would only defeat its purposes, and render nugatory its own measures. Nor can the laws derive support from the manners of the people if the power of moral sentiment be weakened, by enjoying, under the permission of Government, great facilities to commit offences. The laws of the United States have denounced heavy penalties against the traffic of Slaves, because such traffic is deemed unjust and inhuman. We appeal to the spirit of these laws: We appeal to justice and humanity: We ask whether they ought not to operate, on the present occasion, with all their force? We have a strong feeling of the injustice of any toleration of Slavery. Circumstances have entailed it on a portion of our community, which cannot be immediately relieved from it, without consequences more injurious than the suffering of the evil. But to permit it in a new country, where yet no habits are formed which render it indispensable, what is it, but to encourage that rapacity, and fraud and violence, against which we have so long pointed the denunciations of our penal code? What is it, but to tarnish the proud fame of the country? What is it, but to throw suspicion on its good faith, and to render questionable all its professions of regard for the rights of humanity and the liberties of mankind? As inhabitants of a free country; as citizens of a great and rising Republic; as members of a Christian community; as living in a liberal and enlightened age, and as feeling ourselves called upon by the dictates of religion and humanity; we have presumed to offer our sentiments to Congress on this question, with a solicitude for the event, far beyond what a common occasion could inspire.

APPENDIX G.

EXTRACTS FROM "THE LOST PRINCIPLE," BY "BARBAROSSA," PUBLISHED AT RICHMOND IN 1860.

THE SECTIONAL EQUILIBRIUM. — HOW IT WAS CREATED.

In the constitutional convention of 1829, Watkins Leigh said: "*The federal convention of 1787 had, for the first time, to arrange a representation of the people in congress. What was the origin of the federal number I do not certainly know. I have had recourse, in vain, to every source of information accessible to ascertain how that precise portion of slaves* — THREE-FIFTHS — *came to be adopted, what mode or principle of estimate led to it. Some reason there must have been.*"

It is my purpose, in the following pages, to solve this question of constitutional history — to ascertain the reason that operated on the convention which constructed the government under which we live, to adopt in the popular basis the fractional representation which was awarded to the servile population of the South. The report of "The Debates of the Convention of 1787," by Mr. Madison, enables me to do this. It is the only source from which that information can be derived, for the fragment of those proceedings preserved by Judge Yates, affords no clue whatever to the solution of this interesting problem. "The Debates," in 1829, were not published, but slept in manuscript, at Montpelier, until the death of Mr. Madison broke the seal.

This part of the organic law has excited but little curiosity, and yet it is the ground-work of the political edifice, with reference to which every other part was made. A just understanding of this part of the constitution will furnish, if I mistake not, an explanation of many of those questions that have convulsed the North and South, and will supply us with the means of ascertaining how far we have departed from the true meaning of that instrument — how far the ship of State has drifted from the intended course.

Mr. Madison was himself a member of the convention of 1829, and heard the enquiry of Mr. Leigh, but said nothing.

The constitution of the united states is generally understood to be a compact to which the several states are parties; and hence, that all the rights which it provides are state rights, and the remedies for the violation of those rights, state remedies. In consequence of this view of the constitution, state secession and state interposition have been suggested as the modes of redress in the several cases to which they apply. But I shall attempt to prove, by authentic evidence, that this is not true in the exclusive sense in which it has been stated.

The constitution is, indeed, a compact between states, but it is also a compact between slaveholding and non-slaveholding sections; and those sec-

tions are susceptible of obligations and injuries. This is not the least interesting light in which the constitution presents itself, and thus viewed is a great treaty between two nations of opposite civilizations, and, in many respects, opposite interests, making the federal system even more complex than it has been generally supposed to be.

The true character of the constitution, and the government which has grown out of it, is illustrated by the political parties which have arisen under it. At first, a consolidating tendency threatened to absorb the states. This produced the state rights party — a school founded by Jefferson and Madison, and afterwards sustained by a succession of great men, of whom Calhoun was the most illustrious. Calhoun devoted the energies of his wonderful intellect to developing this theory of the constitution. Perceiving that the congressional or departmental checks were of a subordinate character, and did not operate to restrain the ruling power of the constitution, he attempted to eliminate from the government a veto power in the hands of the states, which he denominated an equilibrium, but so denominated for no better reason, as I conceive, than that its originator would have employed it as an imperfect substitute for that wise and healing principle.

An equilibrium, properly so-called, enters into the government and is its living principle. It is ever present; it assists in the deliberations of the legislature and partakes of the enactment of laws; it moderates the judicial power, and in the execution of the laws tempers the executive. But the states, acting as tribunes, as they have been called from their fancied resemblance to that Roman officer, are not present in the legislative chambers to arrest the passage of bills, but are to be invoked to unravel that which has been woven, to repeal that which has been enacted, to undo that which has been done, and that only within the narrow limits of a state jurisdiction, and *in case of a deliberate, palpable and dangerous exercise of powers, not granted by the constitution.* But the equilibrium is confined by no bounds to its discretion, nor even to cases where the constitution is supposed to be infracted, but decides upon the equity and policy as well as the constitutionality of political action, and is omnipotent to repress corruptions and prevent extravagant expenditures of public money.

The nature of the constitution is imprinted on its face, and bears unmistakable traces of its two-fold origin. The states, in their sovereign capacity, are represented in the senate; for, wherever sovereignty exists, equality necessarily prevails. But the sections are represented, and their existence acknowledged in the Electoral College, and in the constitution of the first branch of congress. It will be seen, hereafter, that the senate was constituted on its present basis by a conflict between the great and small states, and that the basis upon which the other branch of congress was founded was the result of a collision between the North and South, and that the differences, in both cases, were adjusted upon the principle of equality.

The difference between a simple compact among the states, and one to which sections and states are equally parties, in respect to the range of powers with which it was thought expedient to invest government, is illustrated by the articles of confederation and that constitution under which we live.

In remarking upon that part of the constitution which contains the provision for a slave representation, a recent intelligent writer says: "This was the first step, and the next was the formation of the present constitution, when a contest arose as to the ratio of representation. Should the South have as many representatives, in proportion to her population, as the North? It was just and right that she should. The federal government had no concern with the relations between blacks and whites, the different classes of her population. It had not the right to inquire whether the negro was a slave or free. The slaves were a better population than the free negroes, and if the latter were to

be counted at their full number in the apportionment of representation, so ought the former. The right could not be refused, because the slaves were naturally or legally unequal to the whites; for so are the free negroes. It could not be refused, because they have no political rights; for neither have the free negroes, paupers, women and children. They are an essential part of the population; if absent, their places must be filled by other laborers, and if they are property as well as population, it is an additional reason for giving their owners the security of full representation for them. But the South, as usual, yielded to Northern exorbitance, and agreed that five slaves should count only as three free negroes. Therefore, instead of 105 representatives in congress, we have only 91."

If, indeed, the constitution is to be regarded in the light of a compact between two nations, it is impossible to say that it was just and right that the South should have a full representation of her slaves, without first ascertaining what effect that would have upon the distribution of the powers of government between the parties. If the effect of a full representation of slaves would place the government under the dominion of the South, the slave power, who can say that there is any principle of natural justice that would have required the North to agree to any such stipulation? If their total or partial exclusion would have produced the contrary effect, and placed the South under the control of the free-soil power, as little could be said in defence of such an arrangement. Each party was entitled to a safe representation in the government, which could result alone from introducing the principle of equality in the division of power; for in nature, as it is in the court of chancery, equality is equity. The idea that the partial exclusion of slaves from the representative basis was due to their moral and legal inferiority is wholly unfounded, as will hereafter be proved, although that doctrine is inculcated by the respectable authority of the federalist. The Southern delegates in the federal convention will likewise, in the progress of this narrative, be vindicated from the insinuated charge of having submitted to *Northern exorbitance;* but the integrity of their motives will be vindicated at the expense of their political sagacity.

The sectional line between the North and the South was almost as deeply drawn in 1787, as it is at the present time. This will be clearly exhibited by an inspection of that part of the debates of the convention now about to pass under review. It contradicts the notion entertained by some, that this sectional antagonism is of recent growth and consequently that the constitution of the united states was not made with reference to it. The states to the northward of Virginia and Maryland were either already free states or were preparing to become so, and it was apparent to every one that they would soon consummate their intention. The Northern delegates in the convention of 1787, all acted in the free-soil interest, and the delegates from the South were unanimous in the defence of the interest of slavery. To reconcile that difference constituted the chief labor of the convention. The year following, in the South Carolina convention of ratification, Gen. Pinckney said: —

"But striking as this difference is, it is not be compared to the difference that there is between the inhabitants of the *Northern and Southern* states; when I say Southern, I mean Maryland, and the states southward of her. There we may truly observe that nature has drawn as strong marks of distinction in the habits and manners of the people, as she has in her climates and productions. The Southern citizen beholds with a kind of surprise the simple manners of the East, and is too often induced to entertain undeserved opinions of the purity of the Quaker, while they, in their turn, seem concerned at what they term the extravagance and dissipation of their Southern friends, *and reprobate, as an unpardonable moral and political evil, the dominion they hold over a part of the human race.*" Elliot's Debates, vol. iv. p. 310.

This feeling, which existed to so great a degree among the people in the two sections, was ever showing itself in congress whenever the interests or power of either was involved. The Northern members objected to the admission of Kentucky into the union, the Southern states objected to the admission of Vermont. That fraternal love which many have supposed to have existed at that period between the North and South, is purely imaginary; instead, a strong and deep-rooted antagonism characterized them both. Already had any affiliation between a Northern member of congress and the Southern members been put under the ban of the North. General Sullivan thus writes to Washington: "The choice of minister of war was postponed to the first of October. *This was a manœuvre of Samuel Adams and others from the North, fearing that, as I was in nomination, the choice would fall on me, who having apostatized from the true New England faith, by sometimes voting with the Southern states, am not eligible.*" . . .

On Wednesday, the 27th June, "Mr. Rutledge moved to postpone the sixth resolution defining the powers of congress, in order to take up the seventh and eighth, which involved the most fundamental points, the rules of suffrage in the two branches. Agreed to *nem. con.*" The seventh and eighth resolutions of the report, were in the words following: —

"7. *Resolved*, That the right of suffrage in the first branch of the national legislature, ought not to be according to the rule established in the articles of confederation, but according to some *equitable* ratio of representation, namely, in proportion to the whole number of white and other free citizens and inhabitants, of every sex, age, and condition, including those bound to servitude for a term of years, and *three-fifths of all other persons* not comprehended in the foregoing description, except Indians not paying taxes in each state.

"8. *Resolved*, That the right of suffrage in the second branch of the national legislature, ought to be according to the rule established for the first."

It will be remarked, that the whole question, which was ultimately divided into two branches, was, by these resolutions, presented in one point of view. The debate which ensued was extremely interesting, and shows, even in the condensed and imperfect account of it which has reached us, the difficulties which the convention encountered. The proposed settlement was first assailed by the small states; and one of the expedients proposed by that interest for the settlement of the dispute exhibits, in striking colors, the deep-seated apprehension, unfounded as it was then pronounced, and has since turned out to be, of an absorption of the lesser by the greater states. It was proposed by the delegates from New Jersey and Delaware to confound all state lines and throw them into one mass, or into *hotchpot*, as the lawyers of the convention called it, and then re-partition the territory into equal parts among the states. But the old difficulty would still have existed. Some of those equal allotments would have been greatly superior to others in wealth and population, which would have caused, to borrow a passage from Burke respecting a similar plan in the French constitution of 1789, "such infinite variations between square and square, as to render mensuration a ridiculous standard of power in the commonwealth, and equality in geometry the most unequal of all measures in the distribution of men." New Jersey and Delaware demanded such a consolidation and re-distribution of territory, or an equality of representation for the states in every department of government. But the more moderate were content with an equal vote in the senatorial department, which they insisted as a negative "to save them from being destroyed." *Self-protection* was their avowed object. It was in this connection, and in reply to Mr. Ellsworth of Connecticut, that Mr. Madison delivered a speech, from which the following extract is made. It bears directly on the object of this publication, and states, in the most explicit language, the purpose and meaning of the fractional repre-

sentation awarded to the South in both the legislative departments by the seventh and eighth resolutions then under discussion. It is to the ratio which they contained that Mr. Madison alludes: —

"He admitted that every peculiar interest, whether in any class of citizens, or any description of states, ought to be secured as far as possible. Wherever there is danger of attack, there ought to be given a constitutional power of defence. But he contended that the states were divided into different interests, not by their difference of size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having, or not having slaves. These two causes concurred in forming the great division of interests in the united states. It did not lie between the large and small states. It lay between the Northern and Southern; and if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth, that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred, was, that instead of proportioning the votes of the states in both branches, to their respective number of inhabitants, computing the slaves in the ratio of five to three, they should be represented in one branch according to the number of free inhabitants only; and in the other according to the whole number, counting the slaves as free. By this arrangement, the Southern scale would have the advantage in one house, and the Northern in the other. He had been restrained from proposing this expedient by two considerations; one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself; the other was the inequality of powers that must be vested in the two branches, and which would destroy the equilibrium of interests."

This speech, so admirable for its correct appreciation of the true principles of representative government, opens the discussion, so far as the debates show, upon the subject of slavery. It exhibits the principles by which the speaker as a constitution maker was guided, and especially sets forth the principles upon which he had, as a Southern delegate, insisted. There could not be produced more undeniable evidence — evidence amounting to the clearest proof — that the ratio of three-fifths, as it stood in the report of the committee of the whole, then under the consideration of the convention, was looked upon as designed to produce an equilibrium between the two sections. This is fortified, and if any doubt remained, would be rendered certain, by the narrative of the introduction of that compromise therefore given. This is but the contemporaneous exposition of the purpose of the proposed basis, by a single member of the convention, but, let it be borne in mind, a member speaking for the whole South, and speaking to the whole North. I will proceed to collect all the passages from the succeeding debate, which concern this point, in order to prove that it was universally looked upon in the same light in which it was viewed by Mr. Madison. By this means, the purpose which that body had in view, in establishing that fractional basis, that mode of distributing power between jealous and at length irritated sections, will be established — established, it is believed, to the satisfaction of every sound understanding. [He then proceeds to give extracts from the ensuing debate, which tend to sustain his theory. But the only object here is to quote enough to show "Barbarossa's" theory. He hardly succeeds in showing a tangible written compact in the sense that the constitution is such.]

APPENDIX H.

REVIEW OF A. H. STEPHENS' AND J. A. JAMESON'S WORKS ON THE CONSTITUTION.

[From the Round Table of October 10, 1868.]

1. *A Constitutional view of the late war between the States; its causes, character, conduct, and results. Presented in a series of colloquies at Liberty Hall.* By Alexander H. Stephens. Philadelphia: National Publishing Co., 1868.
2. *The Constitutional Convention; its history, powers, and modes of proceeding.* By John Alexander Jameson, Judge, etc., and Professor of constitutional law, etc., in the Chicago University. New York: Charles Scribner & Co., 1867.

The architects who builded the real and only temples of American liberty — the states; and those who afterwards combined them, for increased security, into the structure of surpassing grandeur, beauty, and excellence, called "the united states;" essayed to avoid the old-world despotic theory of Divine right, which really signified army-supported politics, and to build entirely upon the idea of man's capacity for self-government. All questions were to be settled without force, by reason, on principles of justice; and all political authority except derivative and delegated, was to be kept out of the governmental contrivances to be made, and left forever in the people — this being popular sovereignty, or the right of self-government. Under Providence, our people naturally grew into organized republics, and ruled themselves by the only true Divine right of government; for, being created free moral agents, they must have free choice in all personal, social, and political affairs, in order to make it just that God should hold them responsible for their probationary acts.

And as the people could not attend personally to political government in large commonwealths, much less throughout a "republic of republics," the plan had to be adopted, of appointing certain persons to do this part of "the people's business," and of putting their commission to act, in carefully written form, so as to empower, direct, and, at the same time, *control* them — the absolute right of such empowering (and necessarily of withdrawing power) always remaining in the people, as their sovereignty, or right of self-government, and being inalienable. The writing in question is their frame of government, or constitution, and is the most important and sacred of public things — the very palladium of law, order, and all private rights and blessings. It is the only procuration or warrant of the public functionary. Within it, he is justifiable in his doings; while in acting outside of it, he becomes a malefactor, nay more, an outlaw, for he has neither its authorization nor its protection. Moreover, to

secure the sacred observance of this vital rescript, and to prevent usurpation, the people provided for the exaction of an oath from such servants and trustees. That oath being to support the constitution; to obey its commands; to observe all its reservations; and to keep themselves under it, and consequently subordinate to its makers; the functionaries must commit perjury and treason if they "act, in this business, outside of the Constitution!"

This is our written system. The same general principles apply to both the state and the federal constitutions. The people were above them. They must remain so, unless a revolution has occurred, which has made them subjects.

What people? How organized? And how capacitated politically to act? These questions must be answered from contemporaneous authorities, as questions of fact. What did the founders say upon these points? and induce the people to declare as their will? *Contemporanea expositio est optima et fortissima.* In all our remarks we shall hold this idea in view.

Mr. Stephens' book well and truly presents the true theory of our "republic of republics;" but, with an exception to be mentioned, its evidences and arguments are generally those of the great intellects who have shone in our partisan politics and statesmanship; and thus a noble and true theory is narrowed and degraded to a matter of party doctrine, and made to suffer all the odium and antagonism that befall the Democratic party, whereas the setting forth of the original formation of the states: their character; their acts in federating: and the contemporaneous expositions of all these things by the fathers; would have placed the discussion above a partisan grade and atmosphere; would have been more worthy of a leading pen; and would have been much more likely to bring our people from wandering in the "wilderness of sin," to the promised land — the political and liberty-preserving system of their fathers.

However, it is a valuable labor to group even these authorities upon the points of the book; and it is a highly creditable compilation, skilfully arranged, so as to make a cogent, and, indeed, a conclusive argument, to sustain the federal theory of the Constitution.

No criticism upon the style, plan, or purpose, need be made, further than to say that the English is good, and the diction respectable — the graces being few; the plan has the shape, without the ease, grace, sparkle, wit, humor, or point of good colloquy; and the purpose is to show, by facts, authorities and arguments, that our political system is a federation of sovereign States.

The peculiar advantage of the colloquial mode to the author is, that he fights ideal foes whose strength being within that of their creator, cannot prevent his predetermined victory. In the cause of truth, however, it is better to grapple with the real deceivers and misleaders, who stand thickly around, vulnerable at every point. Vanquishing the foes of conservatism and peace, in presence of the governing people of our country, does practical and instant good; while battling with prototypes and old dogmas, and trusting to the voters' seeing points, and tracing analogies, postpones indefinitely the victory, to which the author's righteous cause and superior powers entitle him, and which would be a public blessing! Mr. Stephens' fine faculties should be exerted on the rostrum, and in Congress, against the Shermans, Sumners, Binghams, Butlers, Greeleys, and suchlike breathing evils, rather than the ideal Heisters, Bynums, and Nortons, or even the defunct Storys and Websters.

If it was well to go back to the "Expounders," it was *better* to keep on to the Constitutional era, where the very dogmas of the said "expounders" appear in the shape of charges against the Constitution, made by its enemies, to defeat it. This would have enabled the author, upon every point and argument of his book, to reproduce Hamilton, Madison, Wilson, Dickinson, Washington,

and others, with far greater effect than results from repeating Calhoun, Bibb, Gen. Jackson's writers, senate resolutions, and Democratic platforms. And, in truth, as expositors of our system, these are at best but excellent copies of Madison, Jefferson, Tucker, and Taylor of Caroline; and even the latter merely repeated what had been *said at the time and act of forming the Constitution, by its founders.* Therefore we regret that the stones of Mr. Stephens' mosaic-work were mainly quarried from the mine of partisan politics, instead of constitutional history.

However the calm, candid, and truthful tone of the work is admirable — the spirit of the constitutional era running through all its pages. And it is to be regretted that the superabundant proofs which that era affords, are so sparingly used, when they would have added to the conclusions of the work

"Confirmation strong
As proofs of Holy writ."

One of Mr. Stephens' collocutors opens the discussion, by speaking of that gentleman's apparent inconsistency, in supporting secession, after making his great Union speech of November 14, 1860; whereupon Mr. S. proceeds at length, and most satisfactorily, to explain that our polity was a union of states, of which Georgia was an equal member; that our political system is merely the government of republican states by themselves — the governmental contrivances being *their* creations, administered by *their* citizens, and only possessing and exercising *their* power; that he advised Georgia to acquiesce in Lincoln's election; that she did not do so, but withdrew from the association of states she, as to herself, had formed; that in all this she simply exercised her sovereignty, and demanded of him her due obedience and devotion. He has no difficulty in vindicating his consistency.

He clearly sets forth the history of the Union; the action taken by all the States to form the first federation, which he analyzes; the defects of the system, and the consequent general desire for a change; the Annapolis Convention of 1786; the Philadelphia Convention and the credentials of the delegates from their States; the action of the Convention; the constitution they proposed, with an excellent analysis thereof; maintaining throughout and establishing irrefutably the proposition that the Constitution is a compact of federation between sovereign States.

He introduces a decisive mode of proof, which seems not to have been much appreciated till an English publication entitled "*Davis and Lee,*" in 1864 or 5, (republished here) put it prominently forward, viz: The history of the conventions, debates and ratifications of the several States — thus exhibiting precisely what gave the federal constitution its existence and validity, and the federal functionaries their sole warrant of jurisdiction within a given state. He then quotes and comments on Calhoun, Bibb, Jackson, Webster, the *dicta* of the Supreme Court of the United States, the Senate resolutions of 1838 and 1860, etc., — all supporting state sovereignty; and criticises Story and Motley, as well as Webster's efforts, that oppose that theory. And after quoting Jefferson, Hamilton, Tucker, Rawle, John Q. Adams, Lincoln, Greeley, and the Hartford convention on secession, he concludes with a powerful chapter on the strength of confederations and the working of our system.

Altogether we consider this work very valuable, from its calm, judicial spirit, and from its strong and logical presentation of overwhelming proofs, on the most important of all political questions. Its appearance is timely, for public attention is more than ever directed to the questions discussed. It is, however, like the most of judicial opinions, founded entirely upon precedents; and much disappointment will be felt, that so superior and fertile a mind, should have

produced a work with so little originality, profound thought, careful analysis, and philosophical reasoning. As a commentary it is far below Upshur and Calhoun; as a criticism on Story and Webster, it does not approach Bledsoe; and in its most valuable argument, it has been anticipated by the English work before mentioned. In short, a student of constitutional science will find little that he has not seen before.

All things considered, however, the book is a worthy addition to our political literature. While it gathers, and puts in available and useful form, a multitude of scattered fragments of statesmanship and political philosophy, it comments upon them, and the errors it opposes, with a most commendable temper, candor, truthfulness and logical force. Every citizen can read it with profit, and every library should contain it.

The other work, mentioned in the heading, is written by a professor of constitutional law, who seems not to be a professor of constitutional facts; but as a literary performance, and as an effort of original reasoning, it is far superior to that of Mr. Stephens; and it exhibits more research, and profundity of thought. It is however replete with inexcusable and pernicious errors. Like Story and Webster, the author comes to his work with a cherished theory. Assuming his premises, culling such facts of constitutional history as suit him, and arguing logically, he finally reaches the conclusions he desires.

He sets out by dividing conventions into four classes: "I. The spontaneous convention, or public meeting. II. The ordinary legislative convention, or general assembly. III. The revolutionary convention. IV. The constitutional convention." The first three classes are sufficiently described for our purpose by the appellations: the fourth is the main subject of the work, which may be described as the full gospel of consolidation and centralism. The author is unable to imagine a voluntary "Government," or union, that can be other than "a rope of sand:" he attributes to "Government" that coercive power over States, that was expressly denied to it by its makers: he transforms the federal agency into a Briareus, whose hundred or less hands grasp as many helpless but sweetly captivated states, which are thus strongly attached to the Union: and, to cap the climax, he thinks the constitution of a state, a straight jacket, put upon the people thereof, by a superior power (because they are crazy, idiotic, or otherwise incapable of self-government — we presume) which they cannot put off without leave, no matter how dirty, ragged, hurtful, or otherwise objectionable it may be.

That this is a fair presentation of the constitutional law this professor professes, is evinced, we think, by the following samples of his theory, as well as style. He sets out by defining the word "state" as meaning "1st, any organized political community;" and 2nd, "in a limited sense . . . a member of the American union." With great parade of definition, and show of careful reasoning, he asks where "sovereignty resides?" and remarks that "the difficulty is, in the jumble of national and State organizations, to locate it." He finally "locates" it in the nation, and generalizes thus — paraphrasing Webster: "The people of the United States, in 1789, threw the existing constitutions of the several States into hotchpotch, and repartitioned among these bodies, the powers they were thenceforth to exercise, giving a portion thereof to the States, a portion to the general government, and reserving the residue to themselves. And the States have habitually conformed to the edict, which thus curtailed, and ascertained their powers." [p. 29.] "Under the constitution of the nation, . . . each State is permitted, by the sovereign, to frame for its own people, its local constitution." And, continues he, in doing this, "they perform a delegated function." [p. 65.]

Not a fact, or a phantom of a fact, in all American history, supports such ideas; but everything disproves them. But it were a mistake to suppose the

author's ideas to be a "jumble;" or that the contents of his head are hotch-potchy. On the contrary, he reasons clearly from consolidation premises, though he evinces some creative genius in making them. It must be noted, however, that the constitutional construction of the school to which he belongs, means *building*, rather than construing; and their structure is like the temple of Fame in the picture, majestic and "cloud-capped," but is unsubstantial, unpractical, unhistorical, and unconstitutional. They seem to think it right, or at least "smart," to make the facts of their great political fabric. Why should they not? Did not the French at Suez fabricate stone for their piers, jetties, and other constructions? Is it not better and easier to make the fabrications for constitutional construction, since neither materials nor manipulation are required? If Professor Jameson and Engineer Lesseps had been coeval with the civil engineer of Syracuse, "the great globe itself" might have become vagrant, like the lost Pleiad, for they would have said: "*Assume* your fulcrum, Archimedes;" and the premises we all occupy, and reason from, would have been forced to yield to the assumption. And why should we not, in like manner, be logically evicted from our houses or farms, some professor, engineer, or less reputable character, assuming the premises, and saying to us — "*Vamos!*"

But seriously, the professor has merely made a bull. It would be as sensible to expect, by throwing thirteen suits of clothes into a rag-bag, to consolidate their owners into a giant, equal to all of them, as to expect to make a nation by throwing the State constitutions into hotchpotch. The elements of a nation must be people, and all our people were States. It was they (and not their constitutions — or mere written evidences of their will) that must have been put into his vast brick machine (let us call it, as hotchpotch is rather vague) ground over, remoulded, and baked anew, in one stupendous "brick with all the corners on." American history only shows one other high-sourced blunder as amusing. Another eminent Illinois gentleman, named Lincoln, said the *union* made the *States*, and gave them their only *status* and rights!

Starting from such premises as the above, the author goes sublimely but logically along, through all his 550 large octavo pages, never deigning to look at the being, "born of poor but respectable parents, in 1788 (not 1789), called the federal government, together with what Mr. Stephens calls the *res gestæ* — probably meaning the things happening at the gestation. He ignores, or gives no weight to, the following facts: 1, that the states are named and described in the constitution, as New Hampshire, Massachusetts, Connecticut, New York, *et alii*, without the slightest qualification; 2, that they became members of the Union without the least imaginable change; 3, that they are called States throughout the constitution, not in any limited sense, but in the same sense as France, Spain, and Russia are. [Art. III. § 2: Amendments Art. XI.]; 4, that each colony was formed and governed by herself till independence, when she became a complete body politic or state, which, having no superior, must have been sovereign; 5, that George III., at the instance of the American commissioners who negotiated the treaty of 1783 acknowledged each state to be sovereign; 6, that each declared or implied sovereignty to be in herself: 7, that all declared and guaranteed that each had sovereignty, and every possible power, except what she delegated; 8, that this sovereignty was a matter of essential character distinguishing the state from a province or other subdivision of a state or nation; 9, that when the constitution was formed, these States were pre-existent, with sovereign characters solemnly established, and they could but have acted in such characters; 10, that the federal convention of 1787, unanimously wrote the preamble of the constitution as follows: "We the people of the States of New Hampshire, Massachusetts, Connecticut" etc., "do ordain this constitution" etc., and they never

changed their will; but as it was provided that nine of the States might make the federation, and as it could not be foretold which of them might accede to it, the Committee on style properly struck out the names, but put in the equivalent expression, now in the preamble; 11, that Article VII. provides "for the establishment of this constitution between the States so ratifying the same, thus showing that *the States, by ratifying, established*, and alone became the potential parties; 12, that the States have the original and absolute elective power, and the exclusive control of the same [Art. I. § 2, 3; II. § 1], and that they act severally in electing both houses of congress and the president, while these, as their agents, appoint all other officers; 13, that there are no citizens in the federation but citizens of States [Art. III. § 2; IV. § 2] each federal officer necessarily remaining a citizen of a state, owing allegiance thereto, and, indeed, being sworn to support his state's "supreme law," which the Constitution is; 14, and finally that we have no nation but States — "united States," the constitution throughout, thus phrasing the political arrangement of 1788, or calling it a "union of States" [Art. I. § 2; IV. §§ 3, 4]. These facts destroy without remedy, the fabric of consolidation, built, *con amore*, and with such signal ability, by the professor. If he had been seeking for truth, and had come to ruin, which could hardly be, we should sympathize with him; but he started with a palpably wrong theory; sought to prove it; and, as Carlyle once said, "mashed his face to a pancake against the adamant of things:" and we can neither pity him, nor hope he will have the face to go further. A nation is a good thing to have, but he must manage to get along with one which absolute sovereigns constitute by federalizing themselves, and governing themselves jointly. The people might have been one state, but for the stubborn fact that they were many. And the consolidation of them might have been advisable, but our fathers all thought and acted contrariwise; and we protest against discarding their wisdom, after experiencing for two or three generations, and up to 1860, that "its ways are ways of pleasantness, and all its paths are peace." It is sad to Gradgrind to death a theory of so much esthetic merit, but it is a matter of absolute history, that the raw materials of which alone a nation could be made, viz.: the people, the land, and the political power, all belonged to the then existent and acting States of New Hampshire, Massachusetts, *et alii*, which were, after their federation, the self-same States, in every respect, that they were before — thus showing that a nation or state comprising them was a political impossibility.

Of the two authors, under review, however, we must concede to this one the better understanding of sovereignty, though he makes a bad use of his superior knowledge. He sees the nature of it, but errs in regard to its location; while Mr. Stephens, who is correct, in the main, as to its location, is evidently somewhat mistaken concerning its nature. Though the tenor of his book, and the proofs he marshals, make against it, yet he seems now and then to have a vague idea that the States can be partly sovereign and partly subject, for he quotes Webster, as "fully admitting that the States are sovereign, *except* in so far as they have delegated specific sovereign powers." (pp. 398, 403). Hon. Geo. H. Pendleton, in a recent speech at Bangor, said: "It is a union of States, sovereign, *except* in so far as they have delegated," etc. The *N. Y. World* expresses it, that the States are "not sovereign, *except* as to their reserved rights." Nearly all our statesmen, imitating Story and Webster, use the same expression, forgetting that "sovereign" and "sovereignty" are superlative in signification; that divisible sovereignty is a solecism, and is not known to publicists [see Vattel and Lieber]; that what they call *exceptions* from sovereignty are precisely identical with the *powers* absolutely owned by sovereignty, and delegated to its agents; and that it is absurd to talk of sove-

reignty making an exception out of sovereignty, and thereby forming a sovereignty, which, if resisted, can coerce and destroy sovereignty.

Obviously, the excepted sovereignty must have supremacy and coercive power. So we find these gentlemen, and *the World*, agreeing with Webster, in his great speech of 1833, that "so far, State sovereignty is effectually controlled;" and with Lincoln, who said — States are counties of the nation, as well as with the Philadelphia convention, that the "Government" "has absolute supremacy," and holds "the States in allegiance." And, indeed, they can all stand with Professor Jameson, who concedes "that the States are sovereign, *except* in so far as they" are not; and that so far as they are not, "State sovereignty is effectually controlled!"

It is amusing to find the extreme advocates of antagonistic theories occupying the same ground. Is Grant's prayer to be answered? The truth is, our State-rights men do not clearly understand their own platform. They forget that there is nothing to distinguish our States from the States or nations of public law; that the constitution makes no distinction between our States and "foreign States," but recognizes their sameness of character and description — as we have seen; that the possession of sovereignty (which, in nature, is indivisible and absolute), is the only thing that distinguishes a State or nation from a province, colony, satrapy, county, municipality, or other subdivision or dependence of a State or nation; that if sovereignty is out of our States, they are (and ought to be called), united provinces or united counties, instead of united States; and, finally, that if they are under a sovereignty that can control them, they have gone back to where they were, under Britain, for then the will of the political body now called a State, was dominated by an outside sovereignty; and taxation without representation of any given State is as rightful and practicable now as it was then. Are we united provinces or colonies again? One of these advocates (*the World*,) happily affords us the *reductio ad absurdum*, by saying we have a "national sovereignty," and that the States have "no sovereignty, *except* as to their reserved rights." It also says, with Lincoln, that the only rights of the States are reserved in the constitution, by this "national sovereignty." Of course this paramount authority can judge what they are, and decide *pro* or *con* as to their continuance. "Sovereignty" must be able to do this, and enforce its decree! This answers to the very consolidation our fathers strove to avoid. Having gone thus far, *pari passu* with Mr. Lincoln, The World should have joined him in his climax. "*In what, on principle is a State better than a county?*"

We conclude with a few remarks on another apparent error of Mr. Stephens. He generally treats of the States as possessing undivided sovereignty, but seems to concede that it might have been, though it was not, alienated or divided; and, in one place, he distinctly degrades it to a power, or the sum of powers, that could be surrendered or reserved. Was not sovereignty, says he, "most clearly retained and reserved to the people of the several states, in that mass of residuary rights, . . . which was clearly reserved in the constitution itself? It is true, it was not so expressly reserved in the constitution at first, because it was deemed . . . wholly unnecessary. . . . But to quiet the apprehensions of Patrick Henry, Samuel Adams, and the Conventions of a majority of the States, this reservation of sovereignty, was soon after put in the constitution." And to prove that this sovereignty was reserved in the constitution, to the States, he quotes the amendment, declaring that "the powers not delegated . . . are reserved to the States." [p. 489, et seq.]

Sovereignty, which is thus grossly degraded, can be nothing less than the life and soul of the State, in point of importance. It is an essential characteristic, and is neither the subject nor the result of any acknowledgment, agreement, guaranty or reservation; but when in the war for independence, the

force of the colonies prevailed, sovereignty came to exist in each of them as a new-born soul — an adamantine, eternal fact, which the words of George III. or the federated States no more produced, than their confession could have produced Truth or God! The most of our statesmen seem unable to distinguish between "sovereignty" and its "powers." It is evident that these are no part of sovereignty, for all possible "powers" of government may be delegated, and sovereignty remain intact. Sovereignty and ownership are sufficiently analogous for the latter to throw light on the former. One who has ownership, has the absolute right of control and disposal — the *jus disponendi*. This includes all the powers required for its exercise. If the owner delegate "powers" to manage, improve, repair, rent, lease, mortgage, or sell, his ownership remains intact, and the agent neither has, nor exercises it. So with sovereignty: it is, so to speak, the ownership of all persons and things subject to it, or it is like an owner's dominion over them; and after delegating a thousand "powers," (of government, etc.) it is undiminished. England has a myriad of agents, with "powers," in every part of the globe, while her sovereignty is always at home. Sovereignty sent, but did not accompany, the victorious armies of the Crimea. So in our country sovereignty sends "substitutes and agents" with "powers" to govern, but remains quietly at home. That the general "government" has only "powers," the constitution everywhere shows. Is it wrong then to say that sovereignty is the soul of a State? This political body was the only fit receptacle for such soul, and the solemn record shows that it did enter and dwell therein. The two *were* vitally joined. Have they been put asunder? If yea, when?

Finally, it seems to us to be unquestionable, that our States are absolutely sovereign republics; only self-bound in a purely voluntary association, which is solely motived by amity and mutual interest; and that the federal contrivance is their instrumentality for self-government and self-protection — is their creation — lives solely with their life, and acts solely with their powers — and must ever be subject to their "supreme law," and, *à fortiori* to themselves.

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Common Sense **IJG1001**

By Thomas Paine. 100 pages, 1776. (Paper)

Copy of the original where all the S's look life F's. "Society in every state is a blessing, but government, even in its best state, is but a necessary evil; in its worst state an intolerable one; for when we suffer, or are exposed to the same miseries *by a government*, which we might expect in a country *without government*, our calamity is heightened by reflecting that we furnish the means by which we suffer."

The Record of Hon. C. L. Vallandigham on Abolition, the Union, and the Civil War **IJG1002**

256 pages, 1863. (Paper)

This work offers, in a convenient form, the principle speeches of Hon. C. L. Vallandigham, on *the Constitution, the Union, and the Civil War.*

Mr. Vallandigham has never deviated a moment from the old and true principles of Democracy, whereby the Union was formed and preserved, and by which alone it can be saved from destruction, restored, and perpetuated. If his words and acts have been treason, then was the Government itself, through the whole period of its history, down to the inauguration of Mr. Lincoln, one continued act of treason. In common with all democratic and conservative statesmen, he had, before the commencement of the war, uniformly, maintained that the principles around which the Abolition party was organized, were hostile to the Union, and would endanger its peace and perpetuity, if permitted to get control. Those warnings were not heeded, and the fatal mistake was committed of placing in power men whose cherished principles were enemies of the Union.

The Federal Government: Its True Nature and Character; Being a Review of Judge Story's Commentaries on the Constitution of the United States **IJG1003**

By Abel P. Upshur. 160 pages, 1868. (Paper)

This review of Judge Story's Commentaries on the Constitution of the United States is perhaps the ablest analysis of the nature and character of the Federal Government that has ever been published. It has remained unanswered. Indeed, we are not aware that any attempt has been made to invalidate the soundness of its reasoning.

The great vice of Judge Story and the Federalists consisted in desiring to clothe the Federal Government with almost monarchical power; whereas the States had carefully and resolutely reserved the great mass of political power to themselves. The powers which they delegated to the Federal Government were few, and were general in their character. Those which they reserved embraced their original and inalienable sovereignty, which no State imagined it was surrendering when it adopted the Constitution. Mr. Madison dwelt with great force upon the fact that "a delegated is not a surrendered power." The States *surrendered* no powers to the Federal Government. They only *delegated* them. The powers of the States are *original*. Those of the Federal Government are only *derived* and secondary; and they were delegated, not for the purpose of aggrandizing the Federal Government, but for the sole purpose of protecting the rights and sovereignty of "the several States." The Federal Government was formed by the States for their own benefit. The Federal Government is simply an agency, commissioned by the "several States" for their own convenience and safety.

State Sovereignty **IJG1004**

By Jefferson Davis. 120 pages, 1881. (Paper)

"Secession...is to be justified upon the basis that the States are sovereign. There was a time when none denied it. I hope the time may come again when a better comprehension of the theory of our Government, and the inalienable rights of the people of the States,

will prevent any one from denying that each State is a sovereign, and thus may reclaim the grants which it has made to any agent whomsoever."

— Jefferson Davis
Farewell Address
January 21, 1861

A Short History of the Confederate States of America

IJG1056

By Jefferson Davis. 504 pages, 1890.

"The vindication of the Southern States for their Ordinances of Secession in 1861 involves two considerations, namely: their rightful power to withdraw from the Union into which they had entered by voluntary compact; and the causes that justified the exercise of that power.

"In treating this question in its twofold aspect, the legal and the moral, it is not intended to vex the weary ear by adducing time-worn arguments; but, believing the case to be one which must be adjusted finally by historical facts, the candid reader is asked, without favor or prejudice, to make a decision on the unquestionable record."

Mosby and His Men: A Record of the Adventures of That Renowned Partisan Ranger, John S. Mosby, [Colonel C.S.A.] Including the Exploits of Smith, Chapman, Richards, Montjoy, Turner, Russell, Glasscock, and the Men Under Them

IJG1053

By J. Marshall Crawford. 218 pages, 1867.

Written by one of Mosby's men two years after the war. "It is a record of personal recollections of your achievements during the late war. Although not so elaborate a work as I could wish to offer you, yet it is a faithful and correct narrative written from memoranda made of events as they occurred, by one of your comrades, who, from the earliest organization of our command, shared with you your hardships and defeats, until the disbanding of the command at Salem.

"Although not so voluminous as it might be, yet this work contains an account of all the important movements of the command."

Why Should We Change Our Form of Government? **IJG1005**

By Nicholas Murry Butler. 159 pages, 1912. (Paper)

"The distinction between the realm of government and the realm of individual liberty lies at the basis of free institutions that are to last. If the realm of government be so extended as to wipe out entirely the realm of individual liberty, the result can only be stagnation, paralysis, and death. If the realm of individual liberty be so extended as to reduce to nothing the realm of government, the result can only be disorder, anarchy, and the eventual rule of brute force. The history of civilization indicates with convincing clearness that men should be jealous of every extension of the realm of government into the realm of individual liberty. The preservation of the civil liberty of the individual is the corner-stone upon which our American constitutional system has been built. Under the guise of extending the scope of the police power, enthusiasts, humanitarians, and fanatics of every type are constantly invading the realm of individual liberty and are urging other invasions of it. The curious notion seems wide-spread that there exists somewhere and somehow an all-wise and beneficent State or People—something different and apart form individual human beings and not subject to their limitations and defects—which all-wise and beneficent State or People will take care of us better than we can care for ourselves, if only we will give it the opportunity. That this is crude nonsense, contradicted by history and flaunted by common sense, does not prevent its present popularity."

This was written in 1912! If the author were alive today what would he think?

Back to the Republic **IJG1006**

By Harry F. Atwood, 104 pages, 1918. (Paper)

When Benjamin Franklin was asked what kind of government the convention of 1787 had produced, he responded: "A Republic, if you can keep it." Today, if he were alive and asked the same question, his answer would be: "A Republic, why did you change it?"

From 1798 with the passage of the alien and Sedition act and the countless real or imagined national emergencies that have arisen in our nation, the leaders in Washington have tried to con-

vince the people that our republican form of government has failed us. However, once you have read "Back to the Republic", you will see that quite the opposite is true. The republic has not failed us. we have failed the republic.

The Liberal Tradition **IJG1007**

By Lewis W. Douglas. 136 pages, 1935. (Paper)

The Choice Before America: A balanced budget or inflation—The Constitution or Dictatorship. A challenging analysis of these vital issues and the New Deal by the former Director of the Bureau of the Budget. "The stakes are high...already three major powers of the Western world have deserted from the family of parliamentary government. And so it seems that we Americans should think carefully of the kind of a social and economic system under which we want to live, that we should decide whether we are willing consciously to discard the basic principles of freedom on which this country was built."

Stumbling Into Socialism **IJG1008**

By David Lawrence (Editor and Founder of U.S. News and World Report) 196 pages, 1935. (Paper)

"At the present moment the Government of the United States is the biggest single disburser of funds in the world. It is giving away money that does not belong to the federalized bureaucracy in Washington itself but to the people of America. It is using these funds to experiment with the economic system. It is borrowing money belonging to the unborn generations who will be expected to pay back the loans of today.

"The scheme involves a complete transformation of American life through a 'money trust' more dangerous in its control by the few than anything Wall Street ever conceived. There are groups, of course, who sincerely and conscientiously defend such a trend, arguing that we must unify the nation's commerce, we must concentrate all governmental activities in a single place, we must set up Government work-projects for all times, we must acquire ownership on the part of the Government of all natural resources and generally enjoyed in what they call a managed economy!"

Democratic Despotism IJG1009

By Raoul E. Desvernine. 243 pages, 1936. (Paper)

"Despotism is being imposed upon great modern nations and on masses of mankind by the subtle manipulation of democratic processes and the distortion of democratic ideas, and a virtual slavery has evolved from the institutions men hoped would set them free. This menace of a disguised despotism now hangs over the political institutions of America and threatens the individual liberties of our people."

The American System: Shall We Destroy It? IJG1011

by S. Wells Utley, 295 pages, 1936. (Paper)

When we examine other phases of our political and economic life we find a corresponding conflict taking place between the Socialist philosophy of strongly centralized government and the American philosophy, with its emphasis on the freedom of the individual. The former philosophy conceives that the advancement of the race is best achieved through government taking each individual by the hand and leading him down the pathway of life, with the main emphasis placed on the achievement of those things which seem to advance his interest in mass, irrespective of his interest as an individual. This brings with it a tremendous concentration of governmental power, political bureaucracy, and State monopoly. The traditional American philosophy conceives that we best promote the interest of society as a whole by allowing each individual the greatest degree of freedom and by placing on each one the maximum degree of responsibility; by giving him the opportunity of developing to the highest his own inherent qualities; by restricting government to its purely regulatory functions and keeping it as far as possible out of the economic field, except as it restricts fraud and dishonesty in that field; and by keeping at a minimum the personnel of government, who, from an economic standpoint, are a burden which must be borne by those engaged in actual production.

Jefferson the Forgotten Man IJG1012

By Samuel B. Pettengill. 249 pages, 1938. (Paper)

What would Jefferson say about the problems of Government

is you were to talk with him today? Jefferson the Forgotten Man reflects the calm dispassionate reasoning of a member of Congress who participated in the great struggles over legislation on oil, railroads, regulation of securities exchanges and concerning utilities. It gives an inside glimpse of government. Refreshing, vitally interesting in its appraisal of America.

Its pages are replete with passages that expose the folly of "planned Economy" and of "Production-for-use" theories.

Smoke Screen **IJG1015**

By Samuel B. Pettengill. 126 pages, 1940. (Paper)

This book is written to demonstrate that we are moving toward National Socialism. The American people have not chosen this course. The decision is being made for them behind the "smoke screen" of an unguaranteed political promise of the more abundant life which our great age is capable of producing.

The single important question is whether the general welfare we all seek can be more certainly attained under free enterprise or collectivism; under the Constitution of the United States which makes the State the servant of the people, or under Marxism, which makes the people the slaves of the state.

For Americans Only **IJG1016**

By Samuel B. Pettengill and Paul C. Bartholomew. 192 pages, 1944. (Paper)

The future of every home, farm job, social security card, bank deposit, life insurance policy and every business in the United States depends upon the question whether the public understands and will support the American way of life. The Trojan Horse of European or Marxian philosophy of government is ceaselessly at work undermining the faith of the people in the Constitution of the United States and the free enterprise system.

Those who believe in the American way of life have been letting the battle for its survival go by default. People vote as they think and feel. If they think wrong they will vote wrong. If they think the American system has failed and that communism, fascism, or national socialism is a better alternative, the American system will perish.

Basic Principles of Constitutional Money IJG1014

By Etta M. Russell. 120 pages, 1940. (Paper)

Three outstanding factors motivated the writing of this textbook.

First. The knowledge that a large majority of our people of all classes do not have a clear understanding of the actual operations of our monetary system, and its relation to our economic problems.

Second. The fact that recent monetary legislative and monetary policies have rendered obsolete much of the material on the subject, found in textbooks still in use.

Third. The fact that the continuation of our democracy depends upon the intelligent interest of our citizens in the solution of the grave problems now confronting the American people.

Toil, Taxes and Trouble IJG1017

By Vivien Kellems, 159 pages, 1952. (Paper)

Is Income Tax destroying the American way of Life? Is the Withholding Tax violating the Constitutional guarantee against involuntary servitude?

In this book Vivien Kellems answers both questions in the affirmative and marshals the facts to prove her point. She believes that the Income Tax Amendment was slipped over on the unwary American taxpayer and is an instrument used by the followers of the Marx-Engels doctrine which advocates the use of the progressive income tax to destroy the capitalistic system.

THE theory of this work is precisely that upon which the anti-slavery sentiment of the country based itself, in opposing the extension of slavery, the fugitive slave law, and, indeed, slavery itself; while it supports the action (except nullifying), of those states which have from time to time defended themselves against federal excesses.

The author is one who never held or wished for office; who belongs to no party; and who pleads to save the palladium of all his blessings — his commonwealth.

In 1865, Andrew Johnson, filled with the motives and feelings of the war, and surrounded by detectives, spies, Stantons, and Holts, believed Davis to be a traitor, who sought the destruction of "the government," starved federal prisoners at Andersonville and elsewhere, and procured Lincoln's death.

It was then that he uttered the celebrated threat of "making treason odious by hanging traitors"; and for a time, even if it was not contemplated, it was feared that a military commission would be used as the machinery of trial and punishment. But, as Davis and the other leading confederates were prisoners of war, and protected by the *jus gentium*, the policy seemed to be adopted of turning them over to the civil authorities, for trial — if conviction could be assured; or for other disposal, as hereafter indicated.

The North was full of bitterness and vengeful spirit. Sentiments like the following, were heard from many leaders: "Rebels have no rights but to be hung"; "The army has convicted — only execution remains."

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